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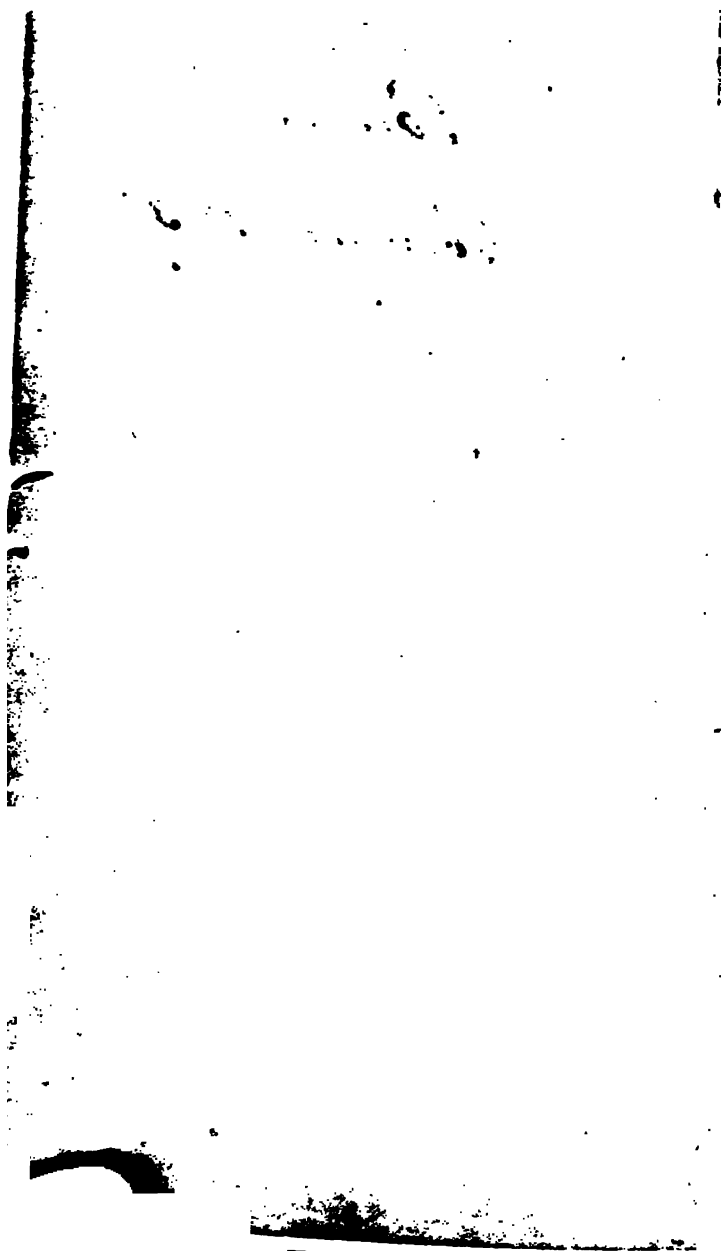


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Lara Blake

February 1837

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Goodwi



TOWN OFFICER:

OR,

LAWS OF MASSACHUSETTS

RELATIVE TO THE

DUTIES OF MUNICIPAL OFFICERS:

TOGETHER WITH

A DIGEST OF THE DECISIONS OF THE
SUPREME JUDICIAL COURT,

UPON THOSE SUBJECTS.

BY ISAAC GOODWIN,
COUNSELLOR AT LAW.

THIRD EDITION,
Revised and Enlarged.

0
Strictness in these cases is wholesome discipline; as it will, from motives of interest, produce care and attention in the selection of Town Officers, and diligence in them when chosen.

Opinion of C. J. Parker.—Mass. Rep. xv. 148.

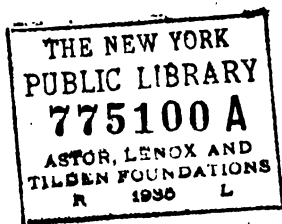


WORCESTER:

PUBLISHED BY DORR, HOWLAND AND CO.

1834.

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PREFACE

TO THE THIRD EDITION.

THE popularity of the first and second editions of Goodwin's Town Officer has induced the publishers to present a third.

The duties of the present editor consist in the addition of such laws as have been passed since the end of the January session of the Legislature of 1829, and the withdrawal of such as have been repealed during the same period.

Important alterations have taken place in the laws relating to the duties of Field Drivers, and Impounding generally ; all former laws on the subject having been repealed and included in the late statute. It will be seen that by this change, that important functionary, the Hogreeve, has no longer a place in town elections.

The law relating to Parishes and Religious Freedom has been introduced, and the chapter on "Parishes and Parish Officers" left out, from the belief that the late statute upon the subject would be sufficient.

A more extended Index has been prepared for this.

than for either of the former editions. Different subjects are separately referred to, and may also be found under the head of different officers.

A few erroneous references have been made at the ends of some of the chapters, which are not mentioned in the errata. It is believed however, that no errors of importance are overlooked.

C. C. BALDWIN.

Worcester, May 20, 1834.

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CONSTITUTION

OF THE

UNITED STATES.

WE, the People of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I.

SECT. 1. ALL legislative powers herein granted, shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECT. 2. The House of Representatives shall be composed of Members chosen every second year by the people of the several States; and the Electors in each State shall have the qualifications requisite for Electors of the most numerous branch of the State Legislature.

No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several States which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such a manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative; and until such enumeration shall be made, the State of New-Hampshire shall be entitled to choose three; Massachusetts, eight; Rhode-Island and Providence Plantations, one; Connecticut, five; New-York, six; New-Jersey, four; Pennsylvania, eight; Delaware, one; Maryland, six; Virginia, ten; North-Carolina, five; South-Carolina, five; and Georgia, three.

When vacancies happen in the representation from any State, the Executive Authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment.

SECT. 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six years; and each Senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the Legislature of any State, the Executive thereof may make temporary appointments until the next meeting of the Legislature, which shall then fill such vacancies.

No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall, when elected, be an inhabitant of that State for which he shall be chosen.

The Vice-President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

The Senate shall choose their other officers, and also a President *pro tempore*, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment, in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment according to law.

SECT. 4. The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof: But the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SECT. 5. Each House shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each House may provide.

Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy; and the yeas and nays of the members of either House on any question, shall, at the desire of one-fifth of those present, be entered on the journal.

Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

SECT. 6. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to or returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either House during his continuance in office.

SECT. 7. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States: If he approve, he shall sign it; but if not, he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a law. But in all such cases, the votes of both Houses shall be determined by yeas and nays; and the names of the persons voting for and against the bill, shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be re-passed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

SECT. 8. The Congress shall have power—To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States:

To borrow money on the credit of the United States:

To regulate commerce with foreign nations, and among the several States, and with the Indian tribes:

To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States:

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures:

To provide for the punishment of counterfeiting the securities and current coin of the United States:

To establish post-offices and post-roads:

To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries:

To constitute tribunals inferior to the supreme court:

To define and punish piracies and felonies committed on the high seas, and offences against the law of nations:

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water:

To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years:

To provide and maintain a navy:

To make rules for the government and regulation of the land and naval forces:

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions:

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress:

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the Government of the United States, and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings:—And

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.

SECT. 9. The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or *ex post facto* law shall be passed.

No capitation, or other direct tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

No tax or duty shall be laid on articles exported from any State.

No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another: Nor shall vessels, bound to or from one State be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States: And no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign State.

SECT. 10. No State shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

No State shall, without the consent of the Congress, lay any imposts or duties on imports, or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the treasury of the United States.

and all such laws shall be subject to the revision and control of the Congress. No State shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

SECT. 1. The Executive Power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected as follows :

Each State shall appoint, in such manner as the Legislature thereof may direct, a number of Electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress ; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an Elector.

[*The Electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each ; which list they shall sign and certify, and transmit, sealed, to the seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of Electors appointed ; and if there be more than one who have such majority and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President ; and if no person have a majority, then from the five highest on the list, the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote : a quorum for this purpose shall consist of a member or members from two-thirds of the States ; and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the Electors shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice-President.]

The Congress may determine the time of choosing the Electors, and the day on which they shall give their votes ; which day shall be the same throughout the United States.

No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of President ; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President ; and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President ; and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

The President shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected ; and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take the following oath or affirmation :

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States ; and will, to the best of my ability, preserve, protect and defend the Constitution of the United States."

SECT. 2. The President shall be commander in chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States ; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices ; and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur ; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the Congress may by law

* See Amendment XII, as to the manner of voting for President and Vice-President.

vest the appointment of such inferior officers as they shall think proper, in the President alone, in the courts of law, or in the heads of departments.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

SECT. 3. He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient: He may, on extraordinary occasions, convene both Houses, or either of them; and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper: He shall receive Ambassadors and other public Ministers: He shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

SECT. 4. The President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery or other high crimes and misdemeanors.

ARTICLE III.

SECT. 1. The Judicial Power of the United States shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the Supreme and inferior Court, shall hold their offices during good behavior; and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

SECT. 2. The Judicial Power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States and treaties made, or which shall be made, under their authority; to all cases affecting Ambassadors, other public Ministers and Consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be party; to controversies between two or more States, *between a State and citizens of another State,** between citizens of different States, between citizens of the same State, claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects.

In all cases, affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury: and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

SECT. 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open Court.

The Congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attained.

ARTICLE IV.

SECT. 1. Full faith and credit shall be given, in each State, to the public acts, records, and judicial proceedings of every other State. And the Congress may, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

SECT. 2. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the Executive Authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

No person, held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up on claim of the party to whom such service or labor may be due.

SECT. 3. *New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States or parts of States, without the consent of the Legislatures of the States concerned, as well as of the Congress.*

* See Amendment XI.

CONSTITUTION OF

The Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States: And nothing in this Constitution shall be so construed, as to prejudice any claims of the United States, or of any particular State.

SECT. 4. The United States shall guarantee to every State in this Union, a republican form of government; and shall protect each of them against invasion; and on application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic violence.

ARTICLE V.

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the Legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid, to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided, that no amendment, which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI.

All debts contracted, and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States, under this Constitution, as under the Confederation.

This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the Judges, in every State, shall be bound thereby, any thing in the Constitution or laws of any State to the contrary notwithstanding.

The Senators and Representatives before mentioned, and the members of the several State Legislatures, and all Executive and Judicial officers, both of the United States and of the several States, shall be bound, by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

The ratification of the Conventions of nine States, shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

ARTICLES,

In Addition to, and Amendment of, the CONSTITUTION OF THE UNITED STATES OF AMERICA, proposed by CONGRESS, and ratified by the Legislatures of the several States, pursuant to the fifth Article of the original Constitution.

ARTICLE I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

ARTICLE II.

A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

ARTICLE III.

No soldier shall in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V.

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment by a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger; nor shall any person be subject for the same offence to

twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

ARTICLE VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

ARTICLE VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact, tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of common law.

ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

ARTICLE XI.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

ARTICLE XII.

The Electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate; the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted: the person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the Representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.

The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed; and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President: a quorum for the purpose shall consist of two thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice.

But no person constitutionally ineligible to the office of President, shall be eligible to that of Vice-President of the United States.

§ In the General Statute Laws, published by the authority of the Legislature, in 1823, there is a further Amendment, called Article XIII, which has never been adopted by a competent number of States, and consequently is no part of this Constitution.

CONSTITUTION OR FORM OF GOVERNMENT
FOR THE
COMMONWEALTH OF MASSACHUSETTS.

PREAMBLE.

THE end of the institution, maintenance and administration of government, is to secure the existence of the body politic; to protect it; and to furnish the individuals who compose it, with the power of enjoying, in safety and tranquillity, their natural rights and the blessings of life: And whenever these great objects are not obtained, the people have a right to alter the government, and to take measures necessary for their safety, prosperity and happiness.

The body politic is formed by a voluntary association of individuals: It is a social compact, by which the whole People covenants with each citizen, and each citizen with the whole People, that all shall be governed by certain laws for the common good. It is the duty of the People, therefore, in framing a Constitution of Government, to provide for an equitable mode of making laws, as well as for an impartial interpretation, and a faithful execution of them; that every man may, at all times, find his security in them.

We, therefore, the people of Massachusetts, acknowledging, with grateful hearts, the goodness of the Great Legislator of the Universe, in affording us, in the course of his providence, an opportunity, deliberately and peaceably, without fraud, violence, or surprise, of entering into an original, explicit and solemn compact with each other; and of forming a new Constitution of Civil Government, for ourselves and posterity; and devoutly imploring his direction in so interesting a design, — DO AGREE UPON, ORDAIN AND ESTABLISH, THE FOLLOWING DECLARATION OF RIGHTS, AND FRAME OF GOVERNMENT, AS THE CONSTITUTION OF THE COMMONWEALTH OF MASSACHUSETTS.

PART I.

A DECLARATION OF THE RIGHTS OF THE INHABITANTS OF THE
COMMONWEALTH OF MASSACHUSETTS.

ART. I. ALL men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness.

II. It is the right as well as the duty of all men in society, publicly, and at stated seasons, to worship the SUPREME BEING, the great Creator and Preserver of the Universe. And no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience; or for his religious profession or sentiments; provided he doth not disturb the public peace, or obstruct others in their religious worship.

III. As the happiness of a people, and the good order and preservation of civil government, essentially depend upon piety, religion and morality; and as these cannot be generally diffused through a community, but by the institution of the public worship of God, and of public instructions in piety, religion and morality: Therefore, to promote their happiness, and to secure the good order and preservation of their government, the People of this Commonwealth have a right to invest their Legislature with power to authorize and require, and the Legislature shall, from time to time, authorize and require, the several towns, parishes, precincts, and other bodies politic, or religious societies, to make suitable provision, at their own expense, for the institution of the public worship of God, and for the support and maintenance of public Protestant teachers of piety, religion and morality, in all cases where such provision shall not be made voluntarily.
And the People of this Commonwealth have also a right to, and do, invest their Legislature with authority to enjoin, upon all the subjects an attendance upon the

instructions of the public teachers aforesaid, at stated times and seasons, if there be any on whose instructions they can conscientiously and conveniently attend.

Provided notwithstanding, that the several towns, parishes, precincts, and other bodies politic, or religious societies, shall at all times have the exclusive right of electing their public teachers, and of contracting with them for their support and maintenance.

And all moneys paid by the subject to the support of public worship, and of the public teachers aforesaid, shall, if he require it, be uniformly applied to the support of the public teacher or teachers of his own religious sect or denomination, provided there be any on whose instructions he attends; otherwise it may be paid towards the support of the teacher or teachers of the parish or precinct in which the said moneys are raised.

And every denomination of Christians, demeaning themselves peaceably, and as good subjects of the Commonwealth, shall be equally under the protection of the law; and no subordination of any one sect or denomination to another shall ever be established by law.*

IV. The People of this Commonwealth have the sole and exclusive right of governing themselves as a free, sovereign, and independent State; and do, and for ever hereafter shall, exercise and enjoy every power, jurisdiction, and right, which is not, or may not hereafter, be by them expressly delegated to the United States of America in Congress assembled.

V. All power residing originally in the People, and being derived from them, the several magistrates and officers of Government, vested with authority, whether legislative, executive, or judicial, are their substitutes and agents, and are at all times accountable to them.

VI. No man, nor corporation or association of men, have any other title to obtain advantages, or particular and exclusive privileges distinct from those of the community, than what arises from the consideration of services rendered to the public; and this title being in nature neither hereditary nor transmissible to children, or descendants, or relations by blood, the idea of a man born a magistrate, lawgiver, or judge, is absurd and unnatural.

VII. Government is instituted for the common good; for the protection, safety, prosperity, and happiness of the People; and not for the profit, honor, or private interest of any one man, family or class of men: therefore the People alone have an incontestable, unalienable, and indefeasible right to institute Government; and to reform, alter, or totally change the same, when their protection, safety, prosperity and happiness require it.

VIII. In order to prevent those, who are vested with authority from becoming oppressors, the People have a right, at such periods and in such manner as they shall establish by their Frame of Government, to cause their public officers to return to private life; and to fill up vacant places by certain and regular elections and appointments.

IX. All elections ought to be free; and all the inhabitants of this Commonwealth, having such qualifications as they shall establish by their Frame of Government, have an equal right to elect officers, and to be elected, for public employments.

X. Each individual of the society has a right to be protected by it in the enjoyment of his life, liberty and property, according to standing laws. He is obliged, consequently, to contribute his share to the expense of this protection; to give his personal service, or an equivalent, when necessary: but no part of the property of any individual, can, with justice, be taken from him, or applied to public uses, without his own consent, or that of the representative body of the People. In fine, the People of this Commonwealth are not controllable by any other laws, than those to which their constitutional representative body have given their consent. And whenever the public exigencies require that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor.

XI. Every subject of the Commonwealth ought to find a certain remedy, by having recourse to the laws for all injuries or wrongs which he may receive in his person, property or character. He ought to obtain right and justice freely, and without being obliged to purchase it; completely, and without any denial; promptly, and without delay; conformably to the laws.

XII. No subject shall be held to answer for any crime or offence, until the same is fully and plainly, substantially and formally described to him; or be compelled to accuse, or furnish evidence against himself. And every subject shall have a right to produce all proofs that may be favorable to him; to meet the witnesses against him face to face; and to be fully heard in his defence by himself, or his counsel, at his election. And no subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the

* See Amendment, Article XI.

protection of the law, exiled, or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land.

And the Legislature shall not make any law that shall subject any person to a capital or infamous punishment, excepting for the government of the army and navy, without trial by jury.

XIII. In criminal prosecutions, the verification of facts, in the vicinity where they happen, is one of the greatest securities of the life, liberty, and property of the citizen.

XIV. Every subject has a right to be secure from all unreasonable searches and seizures of his person, his houses, his papers, and all his possessions. All warrants, therefore, are contrary to this right, if the cause or foundation of them be not previously supported by oath or affirmation; and if the order in the warrant to a civil officer, to make search in suspected places, or to arrest one or more suspected persons, or to seize their property, be not accompanied with a special designation of the persons or objects of search, arrest, or seizure: And no warrant ought to be issued but in cases, and with the formalities, prescribed by the laws.

XV. In all controversies concerning property, and in all suits between two or more persons, except in cases in which it has heretofore been otherwise used and practised, the parties have a right to a trial by jury; and this method of procedure shall be held sacred, unless, in causes arising on the high seas, and such as relate to mariner's wages, the Legislature shall hereafter find it necessary to alter it.

XVI. The liberty of the Press is essential to the security of freedom in a State; it ought not, therefore, to be restrained in this Commonwealth.

XVII. The People have a right to keep and to bear arms for the common defence. And as in time of peace, armies are dangerous to liberty, they ought not to be maintained without the consent of the Legislature; and the military power shall always be held in an exact subordination to the civil authority, and be governed by it.

XVIII. A frequent recurrence to the fundamental principles of the Constitution, and a constant adherence to those of piety, justice, moderation, temperance, industry, and frugality, are absolutely necessary to preserve the advantages of liberty, and to maintain a free government: the People ought, consequently, to have a particular attention to all those principles, in the choice of their officers and Representatives; and they have a right to require of their lawgivers and magistrates, an exact and constant observance of them, in the formation and execution of the laws necessary for the good administration of the Commonwealth.

XIX. The People have a right, in an orderly and peaceable manner, to assemble to consult upon the common good: give instructions to their Representatives; and to request of the Legislative Body, by the way of addresses, petitions, or remonstrances, redress of the wrongs done them, and of the grievances they suffer.

XX. The power of suspending the laws, or the execution of the laws, ought never to be exercised but by the Legislature, or by authority derived from it, to be exercised in such particular cases only as the Legislature shall expressly provide for.

XXI. The freedom of deliberation, speech and debate in either House of the Legislature, is so essential to the rights of the People, that it cannot be the foundation of any accusation or prosecution, action or complaint, in any other Court or place whatsoever.

XXII. The Legislature ought frequently to assemble for the redress of grievances, for correcting, strengthening, and confirming the laws, and for making new laws, as the common good may require.

XXIII. No subsidy, charge, tax, impost or duties ought to be established, fixed, laid or levied, under any pretext whatsoever, without the consent of the People, or their Representatives in the Legislature.

XXIV. Laws made to punish for actions done before the existence of such laws, and which have not been declared crimes by preceding laws, are unjust, oppressive, and inconsistent with the fundamental principles of a free government.

XXV. No subject ought, in any case, or in any time, to be declared guilty of treason or felony by the Legislature.

XXVI. No magistrate or court of law, shall demand excessive bail or sureties, impose excessive fines, or inflict cruel or unusual punishments.

XXVII. In time of peace no soldier ought to be quartered in any house without the consent of the owner; and in time of war such quarters ought not to be made but by the civil magistrate, in a manner ordained by the Legislature.

XXVIII. No person can, in any case, be subjected to law-martial, or to any penalties or pains, by virtue of that law, except those employed in the army or navy, and except the militia in actual service, but by authority of the Legislature.

XXIX. It is essential to the preservation of the rights of every individual, his life, liberty, property and character, that there be an impartial interpretation of

the laws, and administration of justice. It is the right of every citizen to be tried by judges as free, impartial and independent as the lot of humanity will admit. It is therefore not only the best policy, but for the security of the rights of the People, and of every citizen, that the Judges of the Supreme Judicial Court should hold their offices as long as they behave themselves well; and that they should have honorable salaries ascertained and established by standing laws.

XXX. In the government of this Commonwealth the Legislative Department shall never exercise the Executive and Judicial powers, or either of them; the Executive shall never exercise the Legislative and Judicial powers, or either of them; the Judicial shall never exercise the Legislative and Executive powers, or either of them: To the end it may be a government of laws and not of men.

PART II.

THE FRAME OF GOVERNMENT.

THE people inhabiting the territory formerly called the Province of Massachusetts Bay, do hereby solemnly and mutually agree with each other, to form themselves into a free, sovereign, and independent Body Politic or State, by the name of THE COMMONWEALTH OF MASSACHUSETTS.

CHAP. I.

THE LEGISLATIVE POWER.

SECT. I.—THE GENERAL COURT.

ART. I. THE Department of the Legislation shall be formed by two branches, *Senate and House of Representatives*: Each of which shall have a negative on the other.

The Legislative Body shall assemble every year on the last Wednesday in May, and at such other times as they shall judge necessary; and shall dissolve and be dissolved on the day next preceding the said last Wednesday in May; and shall be styled, THE GENERAL COURT OF MASSACHUSETTS.

II. No bill or resolve of the Senate or House of Representatives shall become a law, and have force as such, until it shall have been laid before the Governor for his revision; and if he, upon such revision, approve thereof, he shall signify his approbation by signing the same. But if he have any objection to the passing of such bill or resolve, he shall return the same, together with his objections thereto, in writing, to the Senate or House of Representatives, in which soever the same shall have originated; who shall enter the objections sent down by the Governor, at large, on their records, and proceed to reconsider the said bill or resolve: But if after such reconsideration, two-thirds of the said Senate or House of Representatives, shall, notwithstanding the said objections, agree to pass the same, it shall, together with the objections, be sent to the other branch of the Legislature, where it shall also be reconsidered, and if approved by two-thirds of the members present, shall have the force of law. But in all such cases the votes of both Houses shall be determined by yeas and nays; and the names of the persons voting for or against the said bill or resolve, shall be entered upon the public records of the Commonwealth.

And in order to prevent unnecessary delays, if any bill or resolve shall not be returned by the Governor within five days after it shall have been presented, the same shall have the force of a law.*

III. The General Court shall for ever have full power and authority to erect and constitute Judicatories and Courts of Record, or other Courts, to be held in the name of the Commonwealth, for the hearing, trying, and determining of all manner of crimes, offences, pleas, processes, complaints, actions, matters, causes and things, whatsoever, arising or happening within the Commonwealth, or between or concerning persons inhabiting, or residing, or brought within the same; whether the same be criminal or civil, or whether the said crimes be capital or not capital, and whether the said pleas be real, personal, or mixt; and for the awarding and making out of execution thereupon; to which Courts and Judicatories are hereby given and granted full power and authority, from time to time, to administer oaths or affirmations, for the better discovery of truth in any matter in controversy or depending before them.

IV. And further, full power and authority are hereby given and granted to the said General Court, from time to time, to make, ordain, and establish, all manner of wholesome and reasonable orders, laws, statutes and ordinances, directions and instructions, either with penalties or without, so as the same be not repug-

* See Amendment, Art. I.

nant or contrary to this Constitution, as they shall judge to be for the good and welfare of this Commonwealth, and for the government and ordering thereof, and of the subjects of the same, and for the necessary support and defence of the government thereof; and to name and settle annually, or provide by fixed laws, for the naming and settling all civil officers within the said Commonwealth; the election and constitution of whom are not hereafter in this form of government, or otherwise provided for; and to set forth the several duties, powers and limits of the several civil and military officers of this Commonwealth, and the forms of such oaths or affirmations as shall be respectively administered unto them for the execution of their several offices and places, so as the same be not repugnant or contrary to this Constitution; and to impose and levy proportionable and reasonable assessments, rates and taxes upon all the inhabitants of, and persons resident, and estates lying within, the said Commonwealth; and also to impose and levy reasonable duties and excises, upon any produce, goods, wares, merchandise, and commodities whatsoever, brought into, produced, manufactured or being within the same; to be issued and disposed of by warrant, under the hand of the Governor of this Commonwealth for the time being, with the advice and consent of the Council, for the public service, in the necessary defence and support of the government of the said Commonwealth, and the protection and preservation of the subjects thereof, according to such acts as are or shall be in force within the same.

And while the public charges of government, or any part thereof, shall be assessed on polls and estates, in the manner that has hitherto been practised; in order that such assessments may be made with equality, there shall be a valuation of estates within the Commonwealth taken anew once in every ten years at least, and as much oftener as the General Court shall order.

SECT. II. — SENATE.

ART. I. There shall be annually elected by the freeholders and other inhabitants of this Commonwealth, qualified as in this Constitution is provided, forty persons to be Counsellors and Senators for the year ensuing their election; to be chosen by the inhabitants of the districts, into which the Commonwealth may from time to time be divided by the General Court for that purpose: And the General Court, in assigning the numbers to be elected by the respective districts, shall govern themselves by the proportion of the public taxes paid by the said districts; and timely make known to the inhabitants of the Commonwealth, the limits of each district, and the number of Counsellors and Senators to be chosen therein; provided that the number of such districts shall be never less than thirteen; and that no district be so large as to entitle the same to choose more than six Senators.

And the several counties in this Commonwealth shall, until the General Court shall determine it necessary to alter the said districts, be districts for the choice of Counsellors and Senators (except that the counties of Duke's County and Nantucket shall form one district for that purpose) and shall elect the following number for Counsellors and Senators, viz. Suffolk, six; Essex, six; Middlesex, five; Hampshire, four; Plymouth, three; Barnstable, one; Bristol, three; York, two; Dukes-County and Nantucket, one; Worcester, five; Cumberland, one; Lincoln, one; Berkshire, two.

II. The Senate shall be the first branch of the Legislature; and the Senators shall be chosen in the following manner, viz. There shall be a meeting on the first Monday in *April* annually, for ever, of the inhabitants of each town in the several counties of this Commonwealth; to be called by the Selectmen,* and warned in due course of law, at least seven days before the first Monday in *April*, for the purpose of electing persons to be Senators and Counsellors: And at such meetings every male inhabitant of twenty-one years of age and upwards, having a freehold estate within the Commonwealth, of the annual income of *three pounds*, or any estate of the value of *sixty pounds*,† shall have a right to give in his vote for the Senators for the district of which he is an inhabitant. And to remove all doubts concerning the meaning of the word "Inhabitant," in this Constitution, every person shall be considered as an inhabitant, for the purpose of electing and being elected into any office or place within this State, in that town, district or plantation, where he dwelleth, or hath his home.

The Selectmen ‡ of the several towns shall preside at such meetings impartially; and shall receive the votes of all the inhabitants of such towns present and qualified to vote for Senators, and shall sort and count them in open town-meeting, and in presence of the Town-Clerk, who shall make a fair record, in presence of the Selectmen, and in open town-meeting, of the name of every person voted for, and of the number of votes against his name; and a fair copy of this record shall be attested by the Selectmen and the Town-Clerk, and shall be sealed up, directed to the Secretary of the Commonwealth for the time being, with a superscription,

* See Amendment, Art. II.

† See Amendment, Art. III.

‡ See Amendment, Art. II.

expressing the purport of the contents thereof, and delivered by the Town-Clerk of such towns to the Sheriff of the county in which such town lies, thirty days at least before the last Wednesday in *May* annually; or it shall be delivered into the Secretary's office seventeen days at least before the said last Wednesday in *May*; and the Sheriff of each county shall deliver all such certificates by him received into the Secretary's office seventeen days before the said last Wednesday in *May*.

And the inhabitants of plantations unincorporated, qualified as this Constitution provides, who are or shall be empowered and required to assess taxes upon themselves toward the support of government, shall have the same privilege of voting for Counsellors and Senators in the plantations where they reside, as town inhabitants have in their respective towns; and the plantation meetings for that purpose shall be held annually on the same first Monday in *April*, at such place in the plantations respectively, as the Assessors thereof shall direct; which Assessors shall have like authority for notifying the Electors, collecting and returning the votes, as the Selectmen and Town-Clerks have in their several towns, by this Constitution. And all other persons living in places unincorporated (qualified as aforesaid,) who shall be assessed to the support of government by the Assessors of an adjacent town, shall have the privilege of giving in their votes for Counsellors and Senators, in the town where they shall be assessed, and be notified of the place of meeting by the Selectmen of the town where they shall be assessed, for that purpose accordingly.

III. And that there may be a due convention of Senators on the last Wednesday in *May*, annually, the Governor, with five of the Council, for the time being, shall, as soon as may be, examine the returned copies of such records, and fourteen days before the said day he shall issue his summons to such persons as shall appear to be chosen by a majority of voters, to attend on that day, and take their seats accordingly: Provided nevertheless, that for the first year the said returned copies shall be examined by the President and five of the Council of the former Constitution of government; and the said President shall, in like manner, issue his summons to the persons so elected, that they may take their seats as aforesaid.

IV. The Senate shall be the final judge of the elections, returns, and qualifications of their own members as pointed out in the Constitution; and shall on the said last Wednesday in *May*, annually, determine and declare who are elected by each district to be Senators, by a majority of votes. And in case there shall not appear to be the full number of Senators returned elected by a majority of votes for any district, the deficiency shall be supplied in the following manner, viz. The members of the House of Representatives, and such Senators as shall be declared elected, shall take the names of such persons as shall be found to have the highest number of votes in such district, and not elected, amounting to twice the number of Senators wanting, if there be so many voted for; and out of these, shall elect by ballot a number of Senators sufficient to fill up the vacancies in such district; and in this manner all such vacancies shall be filled up in every district of the Commonwealth; and in like manner all vacancies in the Senate, arising by death, removal out of the State, or otherwise, shall be supplied as soon as may be, after such vacancies shall happen.

V. Provided nevertheless, that no person shall be capable of being elected as a Senator who is not seized in his own right of a freehold within this Commonwealth, of the value of *three hundred pounds* at least, or possessed of personal estate to the value of *six hundred pounds* at least, or of both to the amount of the same sum, and who has not been an inhabitant of this Commonwealth for the space of five years immediately preceding his election; and at the time of his election, he shall be an inhabitant in the district for which he shall be chosen.

VI. The Senate shall have power to adjourn themselves, provided such adjournments do not exceed two days at a time.

VII. The Senate shall choose its own President, appoint its own officers, and determine its own rules of proceedings.

VIII. The Senate shall be a court with full authority to hear and determine all impeachments made by the House of Representatives, against any officer or officers of the Commonwealth for misconduct and mal-administration in their offices. But previous to the trial of every impeachment, the members of the Senate shall respectively be sworn truly and impartially to try and determine the charge in question, according to evidence. Their judgment, however, shall not extend further than to removal from office, and disqualification to hold or enjoy any place of honor, trust or profit under this Commonwealth: but the party so convicted, shall be nevertheless liable to indictment, trial, judgment and punishment, according to the laws of the land.

IX. Not less than sixteen members of the Senate shall constitute a quorum for doing business.

SECT. III.—HOUSE OF REPRESENTATIVES.

ART. I. There shall be in the Legislature of this Commonwealth, a representation of the people, annually elected, and founded upon the principle of equality.

II. And in order to provide for a representation of the citizens of this Commonwealth, founded upon the principle of equality, every corporate town containing one hundred and fifty rateable polls, may elect one Representative: corporate town, containing three hundred and seventy-five rateable polls, may elect two Representatives: Every corporate town, containing six hundred rateable polls, may elect three Representatives; and proceeding in that manner, making one additional Representative for every hundred and twenty-five rateable polls the mean increasing number for every additional Representative.

Provided nevertheless, that each town now incorporated, not having one hundred and fifty rateable polls, may elect one Representative; but no place shall be incorporated with the privilege of electing a Representative, unless the town within the same one hundred and fifty rateable polls.

And the House of Representatives shall have power, from time to time, to fines upon such towns as shall neglect to choose and return members to the House agreeably to this Constitution.

The expenses of travelling to the General Assembly, and returning home, at every session, and no more, shall be paid by the government, out of the treasury, to every member who shall attend as seasonably as he can, in the month of the House, and does not depart without leave.

III. Every member of the House of Representatives shall be chosen by the votes; and for one year at least next preceding his election, shall have been an inhabitant of, and have been seized in his own right of a freehold of the value of one hundred pounds, within the town he shall be chosen to represent, or any part of an estate to the value of two hundred pounds; and he shall cease to represent the town immediately on his ceasing to be qualified as aforesaid.

IV. Every male person, being twenty-one years of age, and resident in any particular town in this Commonwealth for the space of one year next preceding the annual election, having a freehold estate within the same town, of the annual income of one hundred pounds, or any estate of the value of sixty pounds,* shall have a right to vote in the choice of a Representative, or Representatives for the said town.

V. The members of the House of Representatives shall be chosen annually on the first Monday of May, ten days at least before the last Wednesday of that month.

VI. The House of Representatives shall be the Grand Inquest of this Commonwealth; and all impeachments made by them, shall be heard and tried by the Senate.

VII. All Money Bills shall originate in the House of Representatives; and the Senate may propose or concur with amendments, as on other bills.

VIII. The House of Representatives shall have power to adjourn them at such times as they shall think proper, provided such adjournment shall not exceed two days at a time.

IX. Not less than sixty members of the House of Representatives shall constitute a quorum for doing business.

X. The House of Representatives shall be the judge of the returns, election qualifications of its own members as pointed out in the Constitution; shall choose their own Speaker, appoint their own officers, and settle the rules and order of proceeding in their own House: They shall have authority to punish, by censure, every person, not a member, who shall be guilty of disrespect to the House by any disorderly, or contemptuous behavior in its presence; or who, in the presence of the House, shall be guilty of any offence against the peace, dignity, or honor of the House; or who shall assault any of its members, or any witness, or other person, ordered to attend the House, in his way in or returning; or who shall rescue any person arrested by the order of the House.

And no member of the House of Representatives shall be arrested or detained on any civil process, during his going unto, returning from, or his attendance at the General Assembly.

XI. The Senate shall have the same powers in the like cases; and the Governor and Council shall have the same authority to punish in like cases. Provided no imprisonment on the warrant or order of the Governor, Council, or House of Representatives, for either of the above described offences, be for a longer time than thirty days.

And the Senate and House of Representatives may try, and determine, all cases where their rights and privileges are concerned, and which, by the Constitution, they have authority to try and determine, by committees of their own members, in such other way as they may respectively think best.

* See Amendment, Article III.

CHAP. II.

EXECUTIVE POWER.

SECT. I.—GOVERNOR.

ART. I. There shall be a supreme executive Magistrate, who shall be styled, THE GOVERNOR OF THE COMMONWEALTH OF MASSACHUSETTS; and whose title shall be, *His Excellency*.

II. The Governor shall be chosen annually: And no person shall be eligible to this office, unless at the time of his election, he shall have been an inhabitant of this Commonwealth for seven years next preceding; and unless he shall, at the same time, be seized in his own right, of a freehold within the Commonwealth, of the value of *one thousand pounds*; and unless he shall declare himself to be of the Christian religion.

III. Those persons who shall be qualified to vote for Senators and Representatives,* within the several towns of this Commonwealth, shall, at a meeting to be called for that purpose, on the first Monday of *April* annually, give in their votes for a Governor, to the Selectmen, who shall preside at such meetings; † and the Town-Clerk, in the presence and with the assistance of the Selectmen, shall, in open town-meeting, sort and count the votes, and form a list of the persons voted for, with the number of votes for each person against his name; and shall make a fair record of the same in the town books, and a public declaration thereof in the said meeting; and shall, in the presence of the inhabitants, seal up copies of the said list, attested by him and the Selectmen, and transmit the same to the Sheriff of the county, thirty days at least before the last Wednesday in *May*; and the Sheriff shall transmit the same to the Secretary's office, seventeen days at least before the said last Wednesday in *May*; or the Selectmen may cause returns of the same to be made to the office of the Secretary of the Commonwealth, seventeen days at least before the said day; and the Secretary shall lay the same before the Senate and the House of Representatives, on the last Wednesday in *May*, to be by them examined: And in case of an election by a majority of all the votes returned, the choice shall be by them declared and published; but if no person shall have a majority of votes, the House of Representatives shall, by ballot, elect two out of four persons who had the highest number of votes, if so many shall have been voted for; but, if otherwise, out of the number voted for; and make return to the Senate of the two persons so elected; on which, the Senate shall proceed, by ballot, to elect one, who shall be declared Governor. ‡

IV. The Governor shall have authority, from time to time, at his discretion, to assemble and call together the Counsellors of this Commonwealth, for the time being; and the Governor, with the said Counsellors, or five of them at least, shall and may, from time to time, hold and keep a Council, for the ordering and directing the affairs of the Commonwealth, agreeably to the Constitution and the laws of the land.

V. The Governor, with advice of Council, shall have full power and authority, during the session of the General Court, to adjourn or prorogue the same to any time the two Houses shall desire; and to dissolve the same on the day next preceding the last Wednesday in *May*; and, in the recess of the said Court, to prorogue the same, from time to time, not exceeding ninety days in any one recess; and to call it together sooner than the time to which it may be adjourned or prorogued, if the welfare of the Commonwealth shall require the same: And in case of any infectious distemper prevailing in the place where the said Court is next at any time to convene, or any other cause happening, whereby danger may arise to the health or lives of the members from their attendance, he may direct the session to be held at some other the most convenient place within the State.

And the Governor shall dissolve the said General Court on the day next preceding the last Wednesday in *May*.

VI. In cases of disagreement between the two Houses, with regard to the necessity, expediency or time of adjournment, or prorogation, the Governor, with the advice of the Council, shall have a right to adjourn or prorogue the General Court, not exceeding ninety days, as he shall determine the public good shall require.

VII. The Governor of this Commonwealth, for the time being, shall be the Commander in Chief of the army and navy, and of all the military forces of the State, by sea and land; and shall have full power by himself, or by any commander, or other officer or officers, from time to time to train, instruct, exercise and govern the militia and navy; and, for the special defence and safety of the Commonwealth, to assemble in martial array, and put in warlike posture, the inhabitants thereof, and to lead and conduct them, and with them to encounter, repel, resist, expel and pursue, by force of arms, as well by sea as by land, within or

* See Amendment, Article III.

† See Amendment, Article II.

‡ See Amendment, Article I.

without the limits of this Commonwealth; and also to kill, slay and destroy, if necessary, and conquer by all fitting ways, enterprises and means whatsoever, all and every such person and persons as shall at any time hereafter, in a hostile manner, attempt or enterprize the destruction, invasion, detriment or annoyance of this Commonwealth; and to use and exercise, over the army and navy, and over the militia in actual service, the law-martial, in time of war or invasion, and also in time of rebellion, declared by the Legislature to exist, as occasion shall necessarily require; and to take and surprise by all ways and means whatsoever, all and every such person or persons, with their ships, arms, ammunition and other goods, as shall, in a hostile manner, invade or attempt the invading, conquering, or annoying this Commonwealth; and that the Governor be entrusted with all these and other powers, incident to the offices of Captain-General and Commander in Chief, and Admiral, to be exercised agreeably to the regulations of the Constitution, and the laws of the land, and not otherwise.

Provided that the said Governor shall not, at any time hereafter, by virtue of any power by this Constitution granted, or hereafter to be granted to him by the Legislature, transport any of the inhabitants of this Commonwealth, or oblige them to march out of the limits of the same, without their free and voluntary consent, or the consent of the General Court; except so far as may be necessary to march or transport them by land or water for the defence of such part of the State, to which they cannot otherwise conveniently have access.

VIII. The power of pardoning offences, except such as persons may be convicted of before the Senate by an impeachment of the House, shall be in the Governor, by and with the advice of Council: But no charter of pardon, granted by the Governor, with the advice of the Council, before conviction, shall avail the party pleading the same, notwithstanding any general or particular expressions contained therein, descriptive of the offence or offences intended to be pardoned.

IX. All Judicial Officers, the Attorney-General, the Solicitor-General, all Sheriffs, Coroners, and Registers of Probate, shall be nominated and appointed by the Governor, by and with the advice and consent of the Council; and every such nomination shall be made by the Governor, and made at least seven days prior to such appointment.

X. The Captains and subalterns of the militia, shall be elected by the written votes of the trainband and alarm-list of their respective companies, of *twenty-one years of age and upwards*.* The Field-Officers of regiments shall be elected by the written votes of the captains and subalterns of their respective regiments: The Brigadiers shall be elected in like manner, by the Field-Officers of their respective brigades; and such officers so elected, shall be commissioned by the Governor, who shall determine their rank.

The Legislature shall, by standing laws, direct the time and manner of convening the electors, and of collecting votes, and of certifying to the Governor the officers elected.

The Major-General shall be appointed by the Senate and House of Representatives, each having a negative upon the other; and be commissioned by the Governor.

And if the electors of Brigadiers, Field-Officers, Captains, or subalterns, shall neglect or refuse to make such elections, after being duly notified according to the laws for the time being, then the Governor, with advice of Council, shall appoint suitable persons to fill such offices.

And no officer, duly commissioned to command in the militia, shall be removed from his office, but by the address of both Houses to the Governor; or by fair trial in court-martial, pursuant to the laws of the Commonwealth for the time being.†

The commanding officers of regiments shall appoint their Adjutants and Quarter-Masters: The Brigadiers their Brigade-Majors; and the Major-Generals their Aids: And the Governor shall appoint the Adjutant-General.

The Governor, with advice of Council, shall appoint all officers of the Continental army, whom, by the confederation of the United States, it is provided that this Commonwealth shall appoint—as also all officers of forts and garrisons.

The divisions of the militia into brigades, regiments and companies, made in pursuance of the militia laws now in force, shall be considered as the proper divisions of the militia of this Commonwealth, until the same shall be altered in pursuance of some future law.

XI. No moneys shall be issued out of the treasury of this Commonwealth, and disposed of (except such sums as may be appropriated for the redemption of bills of credit or Treasurer's notes, or for the payment of interest arising thereon) but by warrant under the hand of the Governor for the time being, with the advice and consent of the Council, for the necessary defence and support of the Commonwealth; and for the protection and preservation of the inhabitants thereof agreeably to the acts and resolves of the General Court.

* See Amendment, Article V.

† See Amendment, Article IV.

XII. All public boards, the Commissary General, all superintending officers of public magazines and stores, belonging to this Commonwealth, and all commanding officers of forts and garrisons within the same, shall, once in every three months, officially, and without requisition, and at other times, when required by the Governor, deliver to him an account of all goods, stores, provisions, ammunition, cannon, with their appendages, and small arms with their accoutrements, and of all other public property whatever under their care respectively; distinguishing the quantity, number, quality and kind of each, as particularly as may be; together with the condition of such forts and garrisons: And the said commanding officer shall exhibit to the Governor, when required by him, true and exact plans of such forts, and of the land and sea, or harbor or harbors adjacent.

And the said boards, and all public officers, shall communicate to the Governor, as soon as may be after receiving the same, all letters, despatches, and intelligences of a public nature, which shall be directed to them respectively.

XIII. As the public good requires that the Governor should not be under the undue influence of any of the Members of the General Court, by a dependence on them for his support—that he should in all cases, act with freedom for the benefit of the public—that he should not have his attention necessarily diverted from that object to his private concerns—and that he should maintain the dignity of the Commonwealth in the character of its Chief Magistrate—it is necessary that he should have an honorable stated salary, of a fixed and permanent value, amply sufficient for those purposes, and established by standing laws: And it shall be among the first acts of the General Court, after the commencement of this Constitution, to establish such salary by law accordingly.

Permanent and honorable salaries shall also be established by law for the Justices of the Supreme Judicial Court.

And if it shall be found that any of the salaries aforesaid, so established, are insufficient, they shall, from time to time, be enlarged as the General Court shall judge proper.

SECT. II.—LIEUTENANT-GOVERNOR.

ART. I. There shall be annually elected a Lieutenant-Governor of the Commonwealth of Massachusetts, whose title shall be—His Honor—and who shall be qualified, in point of religion, property, and residence in the Commonwealth, in the same manner with the Governor: And the day and manner of his election, and the qualifications of the Electors,* shall be the same as are required in the election of a Governor. The return of the votes for this officer, and the declaration of his election, shall be in the same manner: And if no one person shall be found to have a majority of all the votes returned, the vacancy shall be filled by the Senate and House of Representatives, in the same manner as the Governor is to be elected, in case no one person shall have a majority of the votes of the people to be Governor.

II. The Governor, and in his absence the Lieutenant-Governor, shall be President of the Council, but shall have no vote in Council: and the Lieutenant-Governor shall always be a member of the Council, except when the chair of the Governor shall be vacant.

III. Whenever the chair of the Governor shall be vacant, by reason of his death, or absence from the Commonwealth, or otherwise, the Lieutenant-Governor, for the time being, shall, during such vacancy, perform all the duties incumbent upon the Governor, and shall have and exercise all the powers and authorities which by this Constitution the Governor is vested with, when personally present.

SECT. III.—COUNCIL.

AND THE MANNER OF SETTLING ELECTIONS BY THE LEGISLATURE.

ART. I. There shall be a Council for advising the Governor in the executive part of government, to consist of nine persons besides the Lieutenant-Governor, whom the Governor, for the time being, shall have full power and authority, from time to time, at his discretion, to assemble and call together. And the Governor, with the said Counsellors, or five of them at least, shall and may, from time to time, hold and keep a Council, for the ordering and directing the affairs of the Commonwealth, according to the laws of the land.

II. Nine Counsellors shall be annually chosen from among the persons returned for Counsellors and Senators, on the last Wednesday in May, by the joint ballot of the Senators and Representatives assembled in one room: And in case there shall not be found, upon the first choice, the whole number of nine persons who will accept a seat in the Council, the deficiency shall be made up by the

* See Amendment, Art. III.

Electors aforesaid from among the people at large; and the number of Senators left shall constitute the Senate for the year. The seats of the persons thus elected from the Senate, and accepting the trust, shall be vacated in the Senate.

III. The Counsellors, in the civil arrangements of the Commonwealth, shall have rank next after the Lieutenant-Governor.

IV. Not more than two Counsellors shall be chosen out of any one district of this Commonwealth.

V. The resolutions and advice of the Council shall be recorded in a register, and signed by the members present: And this record may be called for at any time by either House of the Legislature; and any Member of the Council may insert his opinion contrary to the resolution of the majority.

VI. Whenever the office of the Governor and Lieutenant-Governor shall be vacant, by reason of death, absence, or otherwise, then the Council, or the major part of them, shall, during such vacancy, have full power and authority to do and execute all and every such acts, matters and things, as the Governor or Lieutenant-Governor might or could, by virtue of this Constitution, do or execute, if they, or either of them, were personally present.

VII. And whereas the elections appointed to be made by this Constitution, on the last Wednesday in May annually, by the two Houses of the Legislature, may not be completed on that day, the said elections may be adjourned from day to day until the same shall be completed. And the order of elections shall be as follows: The vacancies in the Senate, if any, shall first be filled up; the Governor and Lieutenant-Governor shall then be elected, provided there should be no choice of them by the people: And afterwards the two Houses shall proceed to the election of the Council.

SECT. IV.—SECRETARY, TREASURER, COMMISSARY, &c.

ART. I. The Secretary, Treasurer, and Receiver-General,* and the Commissary-General, Notaries Public,* and Naval Officers† shall be chosen annually, by joint ballot of the Senators and Representatives in one room. And that the citizens of this Commonwealth may be assured, from time to time, that the moneys remaining in the public treasury, upon the settlement and liquidation of the public accounts, are their property, no man shall be eligible as Treasurer and Receiver-General more than five years successively.

II. The Records of the Commonwealth shall be kept in the office of the Secretary, who may appoint his deputies, for whose conduct he shall be accountable; and he shall attend the Governor and Council, the Senate and the House of Representatives, in person, or by his deputies, as they shall respectively require.

CHAP. III.

JUDICIARY POWER.

ART. I. The tenure that all Commission Officers shall by law have in their offices shall be expressed in their respective commissions. All Judicial Officers, duly appointed, commissioned and sworn, shall hold their offices during good behavior, excepting such concerning whom there is different provision made in this Constitution: Provided, nevertheless, the Governor, with consent of the Council, may remove them upon the address of both Houses of the Legislature.

II. Each Branch of the Legislature, as well as the Governor and Council, shall have authority to require the opinions of the Justices of the Supreme Judicial Court, upon important questions of law, and upon solemn occasions.

III. In order that the people may not suffer from the long continuance in place of any Justice of the Peace, who shall fail in discharging the important duties of his office with ability or fidelity, all commissions of Justices of the Peace shall expire and become void in the term of seven years from their respective dates; and upon the expiration of any commission, the same may, if necessary, be renewed, or another person appointed, as shall most conduce to the well being of the Commonwealth.

IV. The Judges of Probate of Wills, and for granting letters of administration, shall hold their Courts at such place or places, on fixed days, as the convenience of the people shall require. And the Legislature shall, from time to time, hereafter appoint such times and places; until which appointments, the said Courts shall be holden at the times and places which the respective Judges shall direct.

* See Amendment, Article IV.

† No such Officers are now chosen—their duties and powers belonging to the officers of the General Government.

V. All causes of marriage, divorce and alimony, and all appeals from the Judges of Probate shall be heard and determined by the Governor and Council, until the Legislature shall, by law, make other provision.

CHAP. IV.

DELEGATES TO CONGRESS.

The Delegates of this Commonwealth to the Congress of the United States, shall, some time in the month of *June* annually, be elected by the joint ballot of the Senate and House of Representatives, assembled together in one room; to serve in Congress for one year, to commence on the first Monday in *November* then next ensuing. They shall have commissions under the hand of the Governor, and the great seal of the Commonwealth; but may be recalled at any time within the year, and others chosen and commissioned, in the same manner, in their stead.*

CHAP. V.

THE UNIVERSITY AT CAMBRIDGE, AND ENCOURAGEMENT OF LITERATURE, &c.

SECT. I.—THE UNIVERSITY.

ART. I. Whereas our wise and pious ancestors, so early as the year one thousand six hundred and thirty-six, laid the foundation of Harvard College, in which University many persons of great eminence have, by the blessing of God, been initiated in those arts and sciences which qualified them for public employments, both in Church and State: And whereas the encouragement of arts and sciences, and all good literature, tends to the honor of God, the advantage of the Christian religion, and the great benefit of this and the other United States of America — It is declared, That the *President and Fellows of Harvard College*, in their corporate capacity, and their successors in that capacity, their officers and servants, shall have, hold, use, exercise and enjoy, all the powers, authorities, rights, liberties, privileges, immunities and franchises, which they now have, or are entitled to have, hold, use, exercise and enjoy: And the same are hereby ratified and confirmed unto them, the said President and Fellows of Harvard College, and to their successors, and to their officers and servants, respectively, forever.

II. And whereas there have been at sundry times, by divers persons, gifts, grants, devises of houses, lands, tenements, goods, chattels, legacies and conveyances, heretofore made either to Harvard College in Cambridge, in New-England, or to the President and Fellows of Harvard College, or to the said College, by some other description, under several charters successively: It is declared, That all the said gifts, grants, devises, legacies and conveyances, are hereby forever confirmed unto the President and Fellows of Harvard College, and to their successors, in the capacity aforesaid, according to the true intent and meaning of the donor or donors, grantor or grantors, devisor or devisors.

III. And whereas by an Act of the General Court of the colony of Massachusetts Bay, passed in the year one thousand six hundred and forty-two, the Governor and Deputy-Governor, for the time being, and all the Magistrates of that jurisdiction, were, with the President, and a number of the clergy in the said Act described, constituted the Overseers of Harvard College: And it being necessary, in this new Constitution of Government, to ascertain who shall be deemed successors to the said Governor Deputy-Governor, and Magistrates: It is declared, That the Governor, Lieutenant-Governor, Council and Senate of this Commonwealth, are, and shall be deemed, their successors; who, with the President of Harvard College, for the time being, together with the Ministers of the Congregational Churches in the towns of Cambridge, Watertown, Charlestown, Boston, Roxbury, and Dorchester, mentioned in the said Act, shall be, and hereby are, vested with all the powers and authority belonging or in any way appertaining to the Overseers of Harvard College: *Provided*, that nothing herein shall be construed to prevent the Legislature of this Commonwealth from making such alterations in the government of the said University, as shall be conducive to its advantage, and the interest of the republic of letters, in as full a manner as might have been done by the Legislature of the late province of the Massachusetts Bay.

* This provision was rendered inoperative by the adoption of the Federal Constitution.

SECT. II.—THE ENCOURAGEMENT OF LITERATURE, &c.

ART. I. Wisdom and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties; and as these depend on spreading the opportunities and advantages of education in the various parts of the country, and among the different orders of the people, it shall be the duty of Legislatures and Magistrates, in all future periods of this Commonwealth, to cherish the interests of literature and the sciences, and all seminaries of them; especially the University at Cambridge, public schools, and grammar schools in the towns; to encourage private societies and public institutions, rewards and immunities, for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and a natural history of the country; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and frugality; honesty and punctuality in their dealings; sincerity, good humor, and all social affections, and generous sentiments among the people.

CHAP. VI.

OATHS AND SUBSCRIPTIONS; INCOMPATIBILITY OF, AND EXCLUSION FROM, OFFICES; PECUNIARY QUALIFICATIONS; COMMISSIONS; WRITS; CONFIRMATION OF LAWS; HABEAS CORPUS; THE ENACTING STYLE; CONTINUANCE OF OFFICERS; PROVISION FOR A FUTURE REVISAL OF THE CONSTITUTION, &c.

ART. I. Any person chosen Governor, Lieutenant-Governor, Counsellor, Senator, or Representative, and accepting the trust, shall, before he proceed to execute the duties of his place or office, make and subscribe the following declaration, viz.

"I, A. B. do declare, that I believe the Christian Religion, and have a firm persuasion of its truth; and that I am seized and possessed, in my own right, of the property required by the Constitution as one qualification for the office or place to which I am elected."*

And the Governor, Lieutenant-Governor and Counsellors shall make and subscribe the said declaration, in the presence of the two Houses of Assembly; and the Senators and Representatives first elected under this Constitution, before the President and five of the Council of the former Constitution, and forever afterwards before the Governor and Council for the time being.

And every person chosen to either of the places or offices aforesaid, as also any person appointed or commissioned to any judicial, executive, military, or other office under the government, shall, before he enters on the discharge of the business of his place or office, take and subscribe the following declaration, and oaths or affirmation, viz.†

"I, A. B. do truly and sincerely acknowledge, profess, testify and declare, that the Commonwealth of *Massachusetts* is, and of right ought to be, a free, sovereign and independent State; and I do swear, that I will bear true faith and allegiance to the said Commonwealth, and that I will defend the same against traitorous conspiracies and all hostile attempts whatsoever: And that I do renounce and abjure all allegiance, subjection and obedience to the King, Queen, or government of *Great-Britain*, (as the case may be) and every other foreign power whatsoever; And that no foreign prince, person, prelate, State or potentate, hath, or ought to have, any jurisdiction, superiority, preeminence, authority, dispensing or other power, in any matter, civil, ecclesiastical or spiritual, within this Commonwealth; except the authority and power which is or may be vested by their constituents in the Congress of the United States: And I do further testify and declare, that no man or body of men hath or can have any right to absolve or discharge me from the obligation of this oath, declaration or affirmation; and that I do make this acknowledgement, profession, testimony, declaration, denial, renunciation and abjuration, heartily and truly, according to the common meaning and acceptation of the foregoing words, without any equivocation, mental evasion, or secret reservation whatsoever. So help me God."

"I, A. B. do solemnly swear and affirm, that I will faithfully and impartially discharge and perform all the duties incumbent on me as according to the best of my abilities and understanding, agreeably to the rules and regulations of the Constitution and the laws of this Commonwealth. So help me God."

Provided always, That when any person chosen and appointed as aforesaid, shall be of the denomination of the people called Quakers, and shall decline

* See Amendment, Art. VII.

† See Amendment, Art. VI.

taking the said oaths, he shall make his affirmation in the foregoing form, and subscribe the same, omitting the words "*I do swear*," "*and abjure*," "*oath, or*," "*and adjuration*," in the first oath; and in the second oath, the words "*swear and*;" and in each of them the words "*So help me GOD*;" subjoining instead thereof, "*This I do under the pains and penalties of perjury*."

And the said oaths or affirmations shall be taken and subscribed by the Governor, Lieutenant-Governor, and Counsellors, before the President of the Senate, in the presence of the two Houses of Assembly; and by the Senators and Representatives first elected under this Constitution, before the President and five of the Council of the former Constitution; and forever afterwards before the Governor and Council for the time being: And by the residue of the officers aforesaid, before such persons and in such manner as from time to time shall be prescribed by the Legislature.

II. No Governor, Lieutenant-Governor, or Judge of the Supreme Judicial Court, shall hold any other office or place, under the authority of this Commonwealth, except such as by this Constitution they are admitted to hold, saving that the Judges of the said Court may hold the offices of Justices of the Peace through the State; nor shall they hold any other place or office, or receive any pension or salary from any other State or government, or power whatever.

No person shall be capable of holding or exercising at the same time, within this State, more than one of the following offices, viz.—Judge of Probate—Sheriff—Register of Probate—or Register of Deeds—and never more than any two offices which are to be held by appointment of the Governor, Lieutenant-Governor and Council, or the Senate, or the house of Representatives, or by the election of the people of the State at large, or of the people of any county, military offices and the offices of Justices of the Peace excepted, shall be held by any one person.

No person holding the office of Judge of the Supreme Judicial Court—Secretary—Attorney-General—Solicitor-General—Treasurer or Receiver-General—Judge of Probate—Commissary General—President, Professor, or Instructor of Harvard College—Sheriff—Clerk of the House of Representatives—Registers of Probate—Register of Deeds—Clerk of the Supreme Judicial Court—Clerk of the Inferior Court of Common Pleas—or Officer of the Customs, including in this description Naval officers—shall at the same time have a seat in the Senate or House of Representatives; but their being chosen or appointed to, and accepting the same, shall operate as a resignation of their seat in the Senate or House of Representatives; and the place so vacated shall be filled up.*

And the same rule shall take place in case any Judge of the said Supreme Judicial Court, or Judge of Probate, shall accept a seat in Council; or any Counsellor shall accept of either of those offices or places.

And no person shall ever be permitted to hold a seat in the Legislature, or any office of trust or importance, under the government of this Commonwealth, who shall, in due course of law, have been convicted of bribery and corruption in obtaining an election or appointment.

III. In all cases where sums of money are mentioned in this Constitution, the value thereof shall be computed in silver at *six shillings and eight pence* per ounce: And it shall be in the power of the Legislature, from time to time, to increase such qualifications, as to property, of the persons to be elected to offices, as the circumstances of the Commonwealth shall require.

IV. All commissions shall be in the name of the Commonwealth of Massachusetts, signed by the Governor, and attested by the Secretary or his Deputy, and have the great seal of the Commonwealth affixed thereto.

V. All writs issuing out of the Clerk's office in any of the courts of law, shall be in the name of the Commonwealth of Massachusetts: They shall be under the seal of the court from whence they issue: They shall bear test of the first Justice of the court to which they shall be returnable, who is not a party, and be signed by the Clerk of such court.

VI. All the laws which have heretofore been adopted, used and approved in the Province, Colony or State of Massachusetts Bay, and usually practised on in the courts of law, shall still remain and be in full force, until altered or repealed by the Legislature; such parts only excepted as are repugnant to the rights and liberties contained in this Constitution.

VII. The privilege and benefit of the writ of habeas corpus shall be enjoyed in this Commonwealth in the most free, easy, cheap, expeditious and ample manner; and shall not be suspended by the Legislature, except upon the most urgent and pressing occasions, and for a limited time not exceeding twelve months.

VIII. The enacting style, in making and passing all acts, statutes and laws shall be—"Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same."

* See Amendment, Art. VIII.

IX. To the end there may be no failure of justice, or danger arise to the Commonwealth from a change of the form of government—all officers, civil and military, holding commissions under the government and people of Massachusetts Bay in New-England, and all other officers of the said government and people, at the time this Constitution shall take effect, shall have, hold, use, exercise and enjoy, all the powers and authority to them granted or committed, until other persons shall be appointed in their stead: And all courts of law shall proceed in the execution of the business of their respective departments; and all the Executive and Legislative Officers, bodies and powers shall continue in full force, in the enjoyment and exercise of all their trusts, employments and authority, until the General Court and the Supreme Executive Officers under this Constitution are designated and invested with their respective trusts, powers and authority.

X. In order the more effectually to adhere to the principles of the Constitution, and to correct those violations which by any means may be made therein, as well as to form such alterations as from experience shall be found necessary—the General Court which shall be in the year of our Lord one thousand seven hundred and ninety-five, shall issue precepts to the Selectmen of the several towns, and to the Assessors of the unincorporated plantations, directing them to convene the qualified voters of their respective towns and plantations for the purpose of collecting their sentiments on the necessity or expediency of revising the Constitution, in order to amendments.

And if it shall appear by the returns made, that two-thirds of the qualified voters throughout the State, who shall assemble and vote in consequence of the said precepts, are in favor of such revision or amendment, the General Court shall issue precepts, or direct them to be issued from the Secretary's office to the several towns, to elect Delegates to meet in convention for the purpose aforesaid.

The said Delegates to be chosen in the same manner and proportion as their Representatives in the Second Branch of the Legislature are by this Constitution to be chosen.

XI. This form of government shall be enrolled on parchment, and deposited in the Secretary's office, and be a part of the laws of the land; and printed copies thereof shall be prefixed to the book containing the laws of this Commonwealth, in all future editions of the said laws.

AMENDMENTS

TO THE CONSTITUTION OF MASSACHUSETTS.

The following Articles of Amendment to the CONSTITUTION, proposed by the Convention, holden November 15th, 1820, were approved, ratified and adopted by a majority of the legal voters in the State, and have become a part of the Constitution of the Commonwealth.

ART. I. If any bill or resolve shall be objected to, and not approved by the Governor; and if the General Court shall adjourn within five days after the same shall have been laid before the Governor for his approbation, and thereby prevent his returning it, with his objections, as provided by the Constitution; such bill or resolve shall not become a law, nor have force as such.

II. The General Court shall have full power and authority to erect and constitute municipal or city governments in any corporate town or towns in this Commonwealth, and to grant to the inhabitants thereof such powers, privileges and immunities, not repugnant to the Constitution, as the General Court shall deem necessary or expedient for the regulation and government thereof, and to prescribe the manner of calling and holding public meetings of the inhabitants in wards, or otherwise, for the election of officers under the Constitution, and the manner of returning the votes given at such meetings: Provided, that no such government shall be erected or constituted in any town not containing twelve thousand inhabitants; nor unless it be with the consent and on the application of a majority of the inhabitants of such town, present and voting thereon, pursuant to a vote at a meeting duly warned and holden for that purpose; And provided also, that all by-laws made by such municipal or city government shall be subject, at all times, to be annulled by the General Court.

III. Every male citizen of twenty-one years of age and upwards, (excepting paupers and persons under guardianship,) who shall have resided within the Commonwealth one year, and within the town or district, in which he may claim a right to vote, six calendar months next preceding any election of Governor, Lieutenant-Governor, Senators or Representatives, and who shall have paid, by

himself or his parent, master or guardian, any State or county tax, which shall, within two years next preceding such election, have been assessed upon him, in any town or district of this Commonwealth; and also every citizen who shall be by law exempted from taxation, and who shall be in all other respects qualified as above mentioned, shall have a right to vote in such election of Governor, Lieutenant-Governor, Senators and Representatives; and no other person shall be entitled to vote in such elections.

IV. Notaries Public shall be appointed by the Governor, in the same manner as judicial officers are appointed, and shall hold their offices during seven years, unless sooner removed by the Governor, with the consent of the Council, upon the address of both Houses of the Legislature.

In case the office of Secretary or Treasurer of the Commonwealth shall become vacant from any cause, during the recess of the General Court, the Governor, with the advice and consent of the Council, shall nominate and appoint, under such regulations as may be prescribed by law, a competent and suitable person to such vacant office, who shall hold the same until a successor shall be appointed by the General Court.

Whenever the exigencies of the Commonwealth shall require the appointment of a Commissary-General, he shall be nominated, appointed and commissioned, in such manner as the Legislature may, by law, prescribe.

All officers commissioned to command in the militia, may be removed from office in such manner as the Legislature may, by law, prescribe.

V. In the elections of Captains and subalterns of the militia, all the members of their respective companies, as well those under, as those above the age of twenty-one years, shall have a right to vote.

VI. Instead of the oath of allegiance prescribed by the Constitution, the following oath shall be taken and subscribed by every person chosen or appointed to any office, civil or military, under the government of this Commonwealth, before he shall enter on the duties of his office, to wit:

"I, A. B. do solemnly swear that I will bear true faith and allegiance to the Commonwealth of Massachusetts, and will support the Constitution thereof. So help me God."

Provided, That when any person shall be of the denomination called Quakers, and shall decline taking said oath, he shall make his affirmation in the foregoing form, omitting the word "swear," and inserting instead thereof, the word "affirm," and omitting the words "so help me God," and subjoining instead thereof, the words, "this I do under the pains and penalties of perjury."

VII. No oath, declaration or subscription, excepting the oath prescribed in the preceding article, and the oath of office, shall be required of the Governor, Lieutenant-Governor, Counsellors, Senators or Representatives, to qualify them to perform the duties of their respective offices.

VIII. No Judge of any Court of this Commonwealth, (except the Court of sessions,) and no person holding any office under the authority of the United States, (Postmasters excepted,) shall, at the same time, hold the office of Governor, Lieutenant-Governor or Counsellor, or have a seat in the Senate or House of Representatives of this Commonwealth; and no Judge of any Court in this Commonwealth, (except the Court of Sessions,) nor the Attorney-General, Solicitor-General, County-Attorney, Clerk of any Court, Sheriff, Treasurer and Receiver-General, Register of Probate, nor Register of Deeds, shall continue to hold his said office after being elected a member of the Congress of the United States, and accepting that trust; but the acceptance of such trust, by any of the officers aforesaid, shall be deemed and taken to be a resignation of his said office; and Judges of the Courts of Common Pleas shall hold no other office under the government of this Commonwealth, the office of Justice of the Peace and Militia offices excepted.

IX. If at any time hereafter any specific and particular amendment or amendments to the Constitution be proposed in the General Court, and agreed to by a majority of the Senators and two-thirds of the members of the House of Representatives present and voting thereon, such proposed amendment or amendments shall be entered on the journals of the two Houses, with the yeas and nays taken thereon, and referred to the General Court then next to be chosen, and shall be published; and if in the General Court next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of the Senators and two-thirds of the members of the House of Representatives present and voting thereon; then it shall be the duty of the General Court to submit such proposed amendment or amendments to the people; and if they shall be approved and ratified by a majority of the qualified voters voting thereon, at meetings legally warned and holden for that purpose, they shall become part of the Constitution of this Commonwealth.

A Resolve for the due enrolment and promulgation of the Tenth article of the Constitution was passed June 15, 1831.

ARTICLE OF AMENDMENT.

X. The political year shall begin on the first Wednesday of January instead of the last Wednesday of May, and the General Court shall assemble every year on the said first Wednesday of January, and shall proceed, at that session, to make all the elections, and do all the other acts, which are by the Constitution required to be made and done at the session which has heretofore commenced on the last Wednesday of May. And the General Court shall be dissolved on the day next preceding the first Wednesday of January, without any proclamation or other act of the Governor. But nothing herein contained shall prevent the General Court, from assembling at such other times, as they shall judge necessary, or when called together by the Governor. The Governor, Lieutenant-Governor, and Counsellors shall also hold their respective offices for one year next following the first Wednesday of January, and until others are chosen and qualified in their stead.

The meeting for the choice of Governor, Lieutenant-Governor, Senators and Representatives, shall be held on the second Monday of November in every year, but meetings may be adjourned, if necessary, for the choice of Representatives, to the next day, and again to the next succeeding day, but no further. But in case a second meeting shall be necessary, for the choice of Representatives, such meetings shall be held on the fourth Monday of the same month of November.

All the other provisions of the Constitution, respecting the elections and proceedings of the members of the General Court, or of any other officers or persons whatever, that have reference to the last Wednesday of May as the commencement of the political year, shall be so far altered, as to have like reference to the first Wednesday of January.

This Article shall go into operation on the first day of October, next following the day when the same shall be duly ratified and adopted as an amendment of the Constitution, and the Governor, Lieutenant-Governor, Counsellors, Senators, and Representatives, and all other state officers, who are annually chosen, and who shall be chosen for the current year, when the same shall go into operation, shall hold their respective offices until the first Wednesday of January then next following, and until others are chosen and qualified in their stead, and no longer; and the first election of the Governor, Lieutenant-Governor, Senators, and Representatives, to be had in virtue of this article shall be had conformably thereto, in the month of November following the day on which the same shall be in force and go into operation, pursuant to the foregoing provision.

All the provisions of the existing Constitution, inconsistent with the provisions herein contained, are hereby wholly annulled.

A Resolve for the due enrolment and promulgation of the Eleventh Article of Amendment of the Constitution was passed Feb. 12, 1834.

ARTICLE OF AMENDMENT.

"Instead of the Third Article of the Bill of Rights, the following modification and amendment thereof is substituted.

As the public worship of God, and instructions in piety, religion, and morality, promote the happiness and prosperity of a people, and the security of a republican government; Therefore, the several religious societies of this Commonwealth, whether corporate or unincorporate, at any meeting legally warned and holden for that purpose, shall ever have the right to elect their pastors or religious teachers, to contract with them for their support, to raise money for erecting and repairing houses for public worship, for the maintenance of religious instruction, and for the payment of necessary expenses; and all persons belonging to any religious society shall be taken and held to be members, until they shall file with the clerk of such society a written notice, declaring the dissolution of their membership, and thenceforth shall not be liable for any grant or contract, which may be thereafter made, or entered into by such society: And all religious sects and denominations, demeaning themselves peaceably, and as good citizens of the Commonwealth, shall be equally under the protection of the law; and no subordination of any one sect or denomination to another shall ever be established by law."

TOWN OFFICER.



ASSESSORS.

I. Of the Choice of Assessors, and their Qualifications.

ALL towns, in the months of March or April, annually,* shall choose three, five, seven, or nine meet persons to be Assessors of all such rates and taxes as the General Court shall order and appoint such town to pay towards the charges of government, within the space of one year from the choice of such Assessors, unless the warrant for the assessment shall not be by them received, before the first day of March succeeding; and in case of its being received afterwards, it shall be delivered to their successors in office, who shall be under the same obligations to make the assessment as their predecessors would have been if they had seasonably received the same; and the said Assessors shall also be the Assessors of all county and town taxes granted through the year. And each Assessor so chosen shall, within the space of seven days after being notified thereof, be sworn before the Town-Clerk or a Justice of the Peace to the faithful discharge of his duty. For the form of the oath, see *OATHS*.

II. Proceedings in the case of the Refusal of an Assessor to serve in such office.

If any Assessor, after being chosen and notified as aforesaid, shall neglect to be sworn, he shall forfeit and pay the sum of *five pounds* for the use of the poor of the town; to be recovered as other penalties are by law to be recovered.† The form of the complaint is prescribed by statute.

The Court of Sessions,‡ upon reasonable excuse made to them, have power to remit the fine.

* Stat. of 1785, ch. 50. § 1. and ch. 75. § 10.

† Ibid. and stat. of 1803, ch. 154. § 3.

‡ Ibid.

The Selectmen shall forthwith, after notice of the refusal of an Assessor to serve, summon a Town-Meeting to supply the vacancy occasioned thereby, or they shall serve as Assessors whenever the town shall not choose any such officers, or if so many of them so chosen shall refuse to accept, as that there shall not be such a number of them as the town voted to have in said office; in that case also, the Selectmen shall be Assessors *ex officio*, and shall be sworn to the performance of the trust.

III. *Proceedings in case the Town neglects to choose either Assessors or Selectmen.*

If any town shall neglect to make choice of Selectmen or Assessors, the said default being made known to the *Court of Sessions*, within the same county, such town shall forfeit and pay a sum not exceeding *one hundred pounds*, nor less than *thirty pounds*, as the Court of Sessions shall order, for the use of the Commonwealth; and in such case, (as also where neither the Selectmen nor Assessors, chosen by any town, shall accept the trust, or, having accepted the trust, shall not perform their duty) the Court of Sessions, in the same county, are empowered to nominate and appoint three or more sufficient freeholders, within such county, to be Assessors of the rates or taxes in such town, as aforesaid; which Assessors, so appointed, after being duly sworn, shall assess the polls and estates, within such town, their due proportion of any tax, according to the rules set down in the act for raising the same; together with the aforesaid penalty, where the town makes default as aforesaid, and such additional sum as shall answer their own reasonable charges, for time and expense in the said service, not exceeding *ten shillings* per day for each man so employed; and having made such assessment, shall issue a warrant, under their hands and seals, for collecting the same, and transmit a certificate thereof, to the Treasurer, with the name of the Constable, Collector, Sheriff, or his Deputy, to whom they shall commit the same to be collected; and such Assessors shall be paid their charges as abovesaid, (the same being adjusted and certified by two or more Justices of the Court by whom they were appointed Assessors under their hands,) out of the public Treas-

ury, by warrant from the Governor, with the advice and consent of Council.*

If any Town or district, from which any state or county tax may be required, shall neglect for the term of five months after having received the warrant of the Treasurer of the commonwealth for assessing any state tax, or the warrant, order of notice of the lawful authority for the appointment of any county tax, to elect assessors, and cause the assessment thereof to be certified as the law requires, the said treasurer and treasurers of the several counties shall respectively have a remedy for the collection of such taxes by an action of debt against the town or district so neglecting. Stat. 1831. ch. 64. § 3.

IV. Proceedings when the Assessors or Selectmen chosen the Town refuse to assess the Taxes.

Where neither the Selectmen nor Assessors, chosen by any town, shall accept the trust, or, having accepted the trust, shall not perform their duty; in such case the Court of Sessions, in the same county, are empowered to nominate and appoint three or more sufficient freeholders, within such county, to be Assessors of the rates or taxes in such town; which Assessors, thus appointed, after being duly sworn, are vested with the same powers, for the same purposes, and receive the same compensation, as Assessors appointed by the Sessions, in cases where a town neglects to choose either Selectmen or Assessors.†

V. Of the power and Duty of Assessors previous to making Assessments.

The assessors of each town, and parish respectively, in convenient time, before they proceed to make any assessment, shall give seasonable warning to the inhabitants, at any of their respective meetings, or by posting up notifications in some public place in said town or parish, as the case may be, or notify the respective inhabitants in some other way, to make and bring in to them, the said Assessors, true and perfect lists of their polls, and of all their estate, both real and personal, (saving such estate as is, or may by law be, exempted from taxation) which they

* Stat. 1785, ch. 50. § 3.

† Stat. 1785, ch. 50. § 3 and 9.

were possessed of, at such periods as the General Court may, from time to time, order and direct ; and if any person or persons shall not bring in a list of their estate, as aforesaid, to the assessors, he, she, or they, so neglecting or refusing, shall not be admitted to make application to *the Sessions*,* for any abatement of the assessment so laid on him, her, or them; unless such person or persons shall make it appear to said court, that it was not within the power of him, her, or them, to deliver to the Assessors, respectively, a list of his, her, or their rateable estate at the time appointed for that purpose.

And if the Assessors suspect any falsehood in the list to them presented, of polls or estates as aforesaid, then the said Assessors, or either of them, shall require the person presenting such list, to make solemn oath that the same is true ; which oath the Assessors, or either of them, are empowered to administer ; and such list, being exhibited on oath, shall be a rule for that person's proportion of the tax who presented the same, which the assessors may not exceed, unless they shall discover any error therein ; in which case the assessors are authorized and directed to assess such articles as appear to be kept back.

Whenever the Treasurer of this Commonwealth shall be directed to send a tax Act to the Assessors of any city, town or district, it shall be his duty to send therewith a suitable number of blanks for invoice and valuation books in the form hereinafter prescribed, and also suitable and convenient forms of Warrants, certificates of assessments for State, County, City, Town and District taxes, forms of notices to be posted up previous to the making of any tax, and also blanks for tax lists or books, sufficient for such city, town or district.†

VI. *Of their General Power and Duty in taking the Invoice, Valuation, and making the Assessments.*

Assessors, chosen by towns, are directed to assess the polls of, and estates within, such town, their due proportion of any tax, according to the rules set down in the

* Stat. 1803, ch. 154, § 3.

† See Forms. and Stat. 1823, ch. 138.

act for raising the same, and make perfect lists thereof under their hands, or the hands of the major part of them, and commit the same to the Constable or Constables, Collector or Collectors, Sheriff or his Deputy, with a warrant under their hands and seals, in the form directed by the statute, and return a certificate thereof to the Treasurer or Receiver-General of this Commonwealth, for the time being, with the name of the Constable or Constables, Collector or Collectors, Sheriff or his Deputy, to whom they shall have committed the same assessment, with the warrant as aforesaid to collect; and the said Assessors shall also have their assessment recorded in the town book, or leave an exact copy thereof, by them signed, with the Town-Clerk, or file such copy in the Assessors' office, where any such is kept, before the same shall be committed to a Constable or Collector, the Sheriff or his Deputy, to collect; and at the same time shall lodge in the said Clerk's office the invoice or valuation, or a copy thereof, from whence the rates or assessments are made, that the inhabitants, or others rated, may inspect the same.

A copy of the lists of the assessment of all taxes, together with a copy of the invoice and valuation from which such assessment shall be made, shall, before the taxes assessed are committed for collection, be deposited in the Assessors' office, where such office is kept, otherwise shall be lodged with the Chairman or principal Assessor, there to remain, to the end that all persons interested may have an opportunity of examining and exposing any error, for the purpose of correction, which may have happened in the assessment of said taxes.*

* It is to be regretted that the Legislature, when amending the statute of 1785, now before us, did not remove the apparent difficulty that Assessors have generally found, in construing the first and eighth sections. It is believed, however, that it was not intended to repeal the wholesome and reasonable provisions of the first section, which provides that the invoice or valuation, or a copy thereof from whence the *State Tax* is made, shall be lodged in the Clerk's office that the inhabitants or others may inspect the same.

The reasons of this provision it would seem were obvious to every one. *The Clerk is disinterested in this case; sworn to keep all the records of the town; his office is accessible at all times; and by pro-*

All county, town and parish rates shall be assessed and apportioned by the Assessors of the several towns and parishes within the Commonwealth upon the polls and estates within the same, according to the rules that shall from time to time be presented and set in and by the then last tax Act of the General Court. Stat. 1785. ch. 50. sect. 8. And copies of the assessments and valuations are to be lodged in the Clerk's office of the place where the same are made, or to be filed in the Assessors' office, if any they have. Where no such office is kept, said copies are to be left with the Chairman or principal Assessor. Stat. 1823. ch. 138.

The following law passed March 4, 1829, in addition to the existing Acts respecting taxation, contains the proper forms of all the blanks used by Assessors for valuation and rate bills.

SEC. 1. From and after the passing of this Act, so much of any act regulating the assessment of Taxes as provides that sheep, and the machinery in Cotton, Woollen, and Linen manufactories shall be exempted from taxation, be, and the same is hereby repealed, and all such sheep and machinery shall hereafter be assessed as other taxable property, and all wild or unimproved lands shall hereafter be assessed at six per centum instead of two per centum on the value thereof; Provided, also, that for all horses, neat cattle, sheep and swine, which shall be kept throughout the year within any City, Town or other place, the owner thereof shall be taxed therefor, where said stock may be so kept.

viding various depositaries for papers of this importance, it removes any suspicions of fraud, that otherwise might attach to officers who were more interested.

Further—the Clerk is the proper certifying officer of the corporation; and in many cases, for instance, in ascertaining the settlement of a pauper, it is of vast importance, that the *town records* should present the fact, whether in the judgment of the Assessors, the subject possessed taxable property or not. It is to be hoped that no board of Assessors will disregard this important provision of the statute; nor that *any future Legislature* will deprive us of this important check upon *our public officers*.

SEC. 2. The President, Professors, Tutors, Librarians, and Students of Harvard, Williams, and Amherst Colleges, and of all other Theological, Medical, and Literary Institutions, Ministers of the Gospel, Preceptors of Academies, and Latin Grammar School Masters, shall hereafter be assessed for their polls and estates in the same manner as the other citizens of this Commonwealth, any thing in any existing Act regulating the assessment of Taxes to the contrary notwithstanding: *Provided*, however, that no tax shall be assessed on any Minister of the Gospel by the Parish or Religious Society of which he is the settled minister: *Provided*, also, that all minors liable to taxation by this Act shall be taxed in the cities, towns, districts or other places where the parents, masters, or guardians, under whose immediate government the said minors may be, may reside, or if he have no parent, master or guardian within the State, such minor shall be personally taxed for his poll as though he were of full age; *Provided*, also, that persons entitled to the income of any personal property held by others in trust for them, shall be liable to be taxed for the capital or principal sum in the town where such persons reside.

Sec. 3. The assessors of any City, Town, District or other place in assessing taxes, shall assess one sixth part of the whole sum to be raised on the male polls over sixteen years of age in said City, Town, District or other place, as near as the same can be conveniently done; *Provided*, that the whole amount of poll taxes assessed in any one year on any individual for any City, Town, and County purposes, highway taxes excepted, shall not exceed the sum of one dollar and fifty cents.

Sec. 4. So much of an Act passed February the twentieth in the year of our Lord one thousand seven hundred and eighty six, entitled, "an Act for the choice and appointment of assessors, and for assigning their powers and authority," as provides that the additional sum which assessors are authorized and empowered to assess over and above the precise sum committed to them to assess, shall in no case amount to more than the sum of Forty Pounds, be, and the same is hereby repealed.

Sec. 5. Hereafter the form of the valuation list with the assessment therein shall be in substance as follows:—

Names,	NON-RESIDENTS.	Names,
No. of Polls,		
Poll Tax,		Places of al if known,
Description of Real Estate,		
True value,		Description Estate,
Reduced value,		
Tax on Real Estate,		True value,
Description of personal property,		
True value,		Reduced val
Reduced value,		
Tax on Personal Property,		Tax,
Total,		

Sec. 6. Hereafter the form of the tax list committed to the collectors shall be in substance as follows.

Name.	No. of Polls.	Poll Tax.	Tax on Real Estate.	Tax on Personal Property	Total.	Time when paid.
A.B.	2	\$1 50	\$4 50	\$3 00	\$9 00	

NON-RESIDENTS.

A. B.	Places of abode, if known.	Tax.
		1 80

March 4, 1829.

They may add the proportion of any State and county tax to the city, town or district tax, for assessment whenever they may deem it convenient. And in every case where Assessors shall so add their State, county, town or district taxes for assessment, it shall be the duty of all such Assessors to insert in the commitment of their list or lists of assessments to the Collectors, the proportion of the State and county tax each respectively may bear to the whole amount of such assessment. *Stat. 1823, ch. 138.*

If a tax is made without a list and valuation of each individual's taxable property having been first taken, the assessment will be illegal and void; and this is as necessary for parish, as well as town taxes.—*Thurston vs. Little, Mass. Rep. iii. 429.*

In the above case, the Court also say, that every person taxed has a concern in the whole valuation and assessment; for if they be illegal in any part, any person taxed may resist payment.—*Ibid, 433.—10 Mass. Rep. 118.*

The accidental omission of any taxable polls or estate, in the assessment of taxes, although it increases the proportions, that others are holden to pay, yet does not render the whole tax void.

5 Mass. Rep. 547.—5 Pickering, 501.

A tax would be void, if made from the valuation and invoice of a preceding year. Or if the grants for two successive years are brought into one tax, or if two successive taxes are founded upon one valuation. *Ibid.*

Nason vs. Whitney, 1 Pick. 140.

Nor can a tax be legally assessed upon a person after his decease ; but the assessment should be upon his estate in the hands of his heir, administrator, or whoever else may be in possession of the same. *Cook vs. Leland*, 5 Pick. 236.

Having the invoice and valuation regularly taken, the Assessors will proceed to levy the tax, according to the rules laid down in the then last *Tax-Act*.—As new *Tax-Acts* issue it will be necessary for the Assessor, previous to commencing his work, carefully to examine the Act, comparing it with that of former years, as well as with the State warrant accompanying it, and which in some instances materially varies from the statute, in which case the statute must of course govern.

See Forms.—For Notification to the inhabitants to bring in their lists.

Method of Assessing Taxes.

Form of Invoice, Valuation and Assessments.

Commitment to the Collector.

Warrants to the Collector.

Certificate to the Treasurer.

Certificate to the Selectmen.

VII. *Of their Power and Duty as it respects Abatements of Taxes.*

If any person or persons shall, at any time, be aggrieved at the sum or sums set and apportioned upon him or them, by the Assessors of any town or parish, and shall make it appear to the Assessors, for the time being, of such town or parish, that he or they are rated more than his or their proportion, according to the rule given in the Act or Acts of the General Court, for making the said assessment ; in such case, the said Assessors, for the time being, shall make a reasonable abatement to the person or persons so aggrieved ; and if they shall refuse so to do, such person or persons, complaining in writing to the next *Court of Sessions*, within that County, and making it appear that he or they are overrated, as aforesaid, he or *they shall be relieved* by the said Court, and shall be reimbursed out of the treasury of the town or parish where

such assessment was made, so much as the said Court or Assessors, respectively, shall see cause to abate him or them, with the charges ; and the said Court of Sessions are empowered, on such complaint being made, to require the Assessors, or Clerk, to produce the valuation by which the assessment is made, or a copy thereof.

If, however, any person shall not bring in to the Assessors a list of his estates, as directed by the ninth section of the same statute, he shall not be admitted to make application to the Court of Sessions, for any abatement of his tax ; unless such person shall make it appear to said Court that it was not within his power to deliver to the Assessors a list of his rateable estate, at the proper time.

And by a more recent Act, power is given to Assessors to exempt from taxation the polls and estates of such persons as, in their judgment, are unable to contribute towards the public charges, from age, infirmity, or poverty—or they may abate such part as they may be assessed at, as the Assessors may think just and equitable. And the same just provision is generally inserted in the Tax-Acts. stat. 1821. Chap. 107. §6.

VIII. Of their Power and Duty relative to Taxes assessed for the Erection or Repairing of School-House.

For these purposes,* every man shall be taxed in the district in which he lives, for all the estate he holds in the town, being under his own actual improvement ; and all other of his real estate, in the same town, shall be taxed in the district in which it is included ; and lands, when the owner thereof lives without the town, shall be taxed in such district as the Assessors, having regard to the local situation thereof, shall appoint ; and it shall be the duty of the Assessors, before they assess a tax for any district, to determine in which district such lands respectively shall be taxed, and to certify, in writing, their determination to the clerk of the town, who shall record the same ; and such land, while owned by any person, residing without the limits of the town, shall be taxed

* Stat. of 1826, ch. 143.

in such district, until such towns shall be districted anew : Provided, however, that all the lands within an town, owned by the same person not living therein, shall be taxed in one and the same district.

And the Assessors shall assess, in the same manner as town taxes are assessed, on the polls and estates of the inhabitants composing any school districts, and on lands in said town, belonging to persons living out of the same, which the Assessors shall have directed to be taxed in such district, all monies voted to be raised, by the inhabitants of such district, for the purposes aforesaid, in thirty days after the clerk of the district shall certify to said Assessors the sum voted, by the district, to be raised as aforesaid.

And it shall be the duty of said Assessors to make warrant, in due form of law, directed to one of the collectors of the town to which such district belongs, requiring and empowering said collector to levy and collect the tax so assessed, and to pay the same, within a time to be limited in said warrant, to the Treasurer of the town to whom a certificate of the assessments shall be made by the Assessors. And the money so collected and paid shall be at the disposal of the committee of the district to be by them applied for the building or repairing school-house, in the district to which they belong. And such Collector, in collecting such tax, shall have the same powers, and be holden to proceed in the same manner, as is by law provided in collecting town taxes.

The same statute further provides, that the Treasurer of any town, to whom a certificate of the assessment of a district tax shall be transmitted as aforesaid, shall have the same authority to enforce the collection and payment of the money so assessed and certified, as if the same had been voted to be raised by the town for the town use. And the Treasurer and Collector shall be paid the same commission on the money collected and paid, for the use of a school-district aforesaid ; and the Assessor for assessing said tax, shall be allowed, by the district, the same sum for each and every day while employed assessing the same, as is allowed and paid by the town for similar services. Stat. 1826. Ch. 143.

Assessors of towns shall not be made responsible for the assessment of any tax upon the inhabitants of a school district, when the clerk of such school district shall have certified to said assessors, that such tax was voted to be raised at a legal meeting of the inhabitants of such school district, but the liability, if any, shall rest solely with said school district, and the assessors shall be responsible only for their own integrity and fidelity. Stat. 1833. Ch. 166.

Monies voted to be raised by a school-district for the building and repairing of a school-house, pursuant to the statute of 1799, ch. 66, may be assessed by Assessors chosen after such vote.—*Pond vs. Negus & al. Mass. Rep. iii. 320.*

It is not necessary that such vote be certified by the district clerk, to the Assessors in office at the time the vote passed; but it may be certified to the Assessors which shall be chosen afterwards.—*Ibid.*

Nor is it necessary that the Assessors make the assessment within thirty days from the date of the certificate of the district clerk; for, although they are directed so to do by the statute, yet, as there are no negative words restraining them from making the assessment afterwards, the naming of the time for the assessment must be considered as directory to the Assessors, and not as a limitation of their authority.—*Ibid.*

If the Assessors make an illegal assessment, and issue their warrant to collect the money, they may revoke their doings, and make a new assessment and issue a new warrant, without a second certificate from the district clerk; or if their office should expire before making such new assessment, or if they should neglect or have no time to make any assessment, the district clerk may make a second certificate to their successors, who may make the assessment.—*Ibid.*

A school district, after having voted to raise money for building or repairing a school-house, may, at a legal meeting at any time before the assessment, rescind their vote; and then the Assessors, after regular notice, will have no authority to make the assessment.—*Ibid.*

If a school-district vote that the money, raised by them for the purpose of building or repairing a school-house.

shall be paid within a certain time, the Assessors may, notwithstanding such vote, make the assessment after the expiration of the time of payment expressed in the vote ; for the power of fixing the time of payment is not given to the district, but to the Assessors, who are to limit it in their warrant.—*Ibid.*

If, after the inhabitants of a school-district have voted to raise money for building a school-house, and before the same be assessed, the limits of the district be altered and a new district be formed by the town, the vote to raise the money is annulled, and the assessment cannot be legally made.—*Richards vs. Dagget & al. Mass. Rep. iv. 534.*

So, if the alteration be made after the money is assessed, the Collector cannot proceed to collect the tax.—*Ibid.*

By the provisions of the statute of 1799, c. 66, lands of a resident owner, in his own occupation, shall be assessed for the use of the school-district within which he lives ; and his lands in the occupation of his tenant shall be assessed in the district in which the tenant lives ; and these provisions are not controlled by the discretionary powers given to the Assessors in the general Tax Act.—*Pease vs. Whitney & al. Mass. Rep. v. 380. Same vs. Same, Mass. Rep. viii. 93.*

But the lands of a non-resident owner the Assessors have discretionary powers to assign to such district as will best equalize the taxable property among the districts ; but when this assignment is once made, it becomes unalterable so long as the lands remain in the same owners.—*Ibid.*

The return of the Freeholder, to whom the warrant was directed for calling the meeting of the district, is conclusive upon the Assessors that the meeting was legally warned ; nor can collateral evidence be admitted that some of the inhabitants had less than seven days notice.—*Saxton vs. Nimms & al. Mass. Rep. xiv. 320.*

Assessors have the same power to remit or abate any of the taxes assessed upon the inhabitants of a school-district, that they have in the case of town taxes.*

* Stat. of 1811, ch. 24.

IX. *Of their power and duty as it respects taxes assessed for the support of Highways.*

Each town,* at some public meeting of the inhabitants thereof, regularly notified and warned, shall vote and raise such sum of money, to be expended in labour and materials on the highways and townways, as they shall determine necessary for the purpose : And the Assessors shall assess the same on the polls and rateable estate, personal and real, of the inhabitants, residents, and non-residents of their town, as other town charges are by law assessed, and deliver to each Surveyor a list of the persons, and the sums at which they are severally assessed for his limits. And the Surveyor, at the expiration of his term, shall render to the Assessors, for the time being, a list of such persons as shall have been deficient (if any such they be) in working out their highway rate ; or otherwise paying him the sum assessed therefor ; which deficient sums shall, by the Assessors, be put in a distinct column, in the next assessment for the town tax, and collected by the Constable or Collector thereof, as other town taxes are collected, and paid into the town treasury, for the use of the town.

It is further provided by said statute,† that the selectmen or Assessors of each town shall assign and appoint in writing, annually, to the Surveyors, their several limits and divisions of the highways and townways, for repair and amendment to which assignments the said Surveyors are directed to observe and conform themselves. But by a late statute, the duty of limiting the Surveyors is confined to the selectmen.

Whenever the town shall empower their Surveyors of highways, to collect taxes for making and repairing the ways, which shall not be paid in labour or otherwise within the time limited by law, or such periods as may be agreed on by the town, the Assessors shall deliver to the Surveyors warrants of distress substantially in the form prescribed for collecting other town taxes. Or the assessors may deliver a warrant to the Collector, authorizing him to collect the deficiency in any highway tax.‡

* Stat. 1786, ch. 81. † Stat. of 1796, ch. 58. § 4. ‡ Stat. of 1796, ch. 58. § 5.

A tax for repairs of highways, or even a bridge that is suddenly carried away by a flood, if assessed as a money tax is void.—*Libby vs. Burnham*, Mass. Rep. xv. 144. But by the stat. of 1818, chap. 121. sec. 1, it is provided, that any town having 800 inhabitants may, at any legal meeting, vote to raise any sum of money for the making and repairing of highways, and may direct the same to be assessed upon the polls and estates, as other town taxes are.

And by the stat. 1833. ch. 110. this provision is extended to all the towns and districts in this Commonwealth.

It will be perceived that a special vote of the town, directing the grant to be assessed as a money tax is necessary to authorize the Assessors so to make the assessment.

X. *Of their power and duty in relation to Collectors of Taxes, when such Collectors are taken on Treasurers' execution.*

Whenever a Constable or Collector of any town or precinct, shall be taken upon execution, it shall be lawful for the Assessors of such town or precinct, for the time being, if they see fit, to demand and receive of the Constable or Collector, taken as aforesaid, a true copy of any or all the assessments, which, as Constable or Collector aforesaid, he had in his hands unsettled, at the time of being taken as aforesaid, with the whole evidence of all payments on the assessments demanded as aforesaid; and in case the said Constable or Collector, taken as aforesaid, shall, upon being demanded thereto, deliver up to the said Assessors, all the assessments, which he, as Constable or Collector as aforesaid, shall have in his hands unsettled, together with the whole evidence of all payments on the assessments demanded as aforesaid, then the said Constable or Collector shall receive such credit as the said Assessors, from an inspection of his assessments, shall adjudge him entitled to; and the said Constable or Collector, taken as aforesaid, shall be holden for the payment of such sum or sums of money, as he shall be found deficient, after being credited as aforesaid. Stat. 1786. ch. 46. § 14.

And the same town or precinct may proceed to the choice of another Collector, at any other time besides the annual meeting in March, to finish the collections on the

same assessments, who shall be sworn to the faithful discharge of his office; or if he shall refuse or neglect to accept the said office, or refuse to be sworn as aforesaid, he shall incur the penalty, which Constables by law will incur for refusing or neglecting to be sworn, or to serve in the office of Constable. And the Assessors, for the time being, respectively, on receiving the assessment as aforesaid, shall make and deliver to the same Collector, chosen and sworn as aforesaid, a warrant or warrants, for finishing the collections last aforesaid, in the form by law prescribed, (*mutatis mutandis*) and the same Collector shall proceed to finish such collections, in the same manner as Constables, or other Collectors, are to proceed in collecting like species of rates or taxes.

And if any Collector, taken as aforesaid, shall, on demand as aforesaid, refuse to exhibit and deliver up his assessments, with the evidence as aforesaid, he shall be forthwith either by the officer taking him as aforesaid, or by warrant from some Justice of the Peace, committed to the common gaol of the county; there to remain until he shall exhibit the same for the purpose aforesaid.

And the Assessors of such town or precinct are empowered to take the duplicate or copies of the records of such assessments, if the same are recorded, and the same copies to deliver to the Collector, chosen as last aforesaid; who, having received the same, and a warrant therefor, shall proceed to finish the collection of the rates and taxes, in the same assessments mentioned, of the persons who did not pay the same to the Constable or Collector, taken as aforesaid.

Provided, however, that the Collectors chosen to finish the collections aforesaid, on averment of payment by the person or persons assessed, to the Constable or Collector taken as aforesaid, and denial of payment to the Collector for finishing the said collections, shall not proceed to detain or imprison any person, unless a vote of such town or precinct is first had therefor, and certified to the same Collector by the Clerk of such town or precinct.

XI. *Of their power and duty in relation to such Collectors as from insanity or infirmity, are unable to discharge their duty. Also, their power and duty in case of the decease of a Collector.*

It is provided by statute,* that when any Constable or Collector of any town or parish, who may become *non compos mentis*, and who may have a guardian duly appointed, and who may, by bodily infirmity, be rendered incapable of discharging the duties of his office, in the judgment of the Assessors, before such insane or infirm Constable or Collector hath perfected his collection; the Assessors shall thereupon procure and appoint in writing, under their hands, some suitable person as Collector, to perfect such collection, and grant him a warrant for such purpose; and the person so appointed shall have the same power and authority, as were granted to such insane or infirm Constable or Collector.

Provided, however, that no person shall be appointed to complete the collection of such infirm Collector, unless he shall request the same: Provided, also, that when it shall appear to the Assessors that such insane or infirm Constable or Collector shall have paid to the Treasurer or Treasurers, to whom he was accountable, a larger sum of money than the amount of the monies that he has collected from the persons borne on his list, the Assessors, in their warrant to the collector by them appointed, shall direct him to pay such sums as shall appear to them to be overpaid, as aforesaid, to the guardian of such insane Constable or Collector, or to such infirm Constable or Collector, as the case may be.

And in the cases aforesaid, and in case of the decease of any Constable or Collector of taxes, before his perfecting his collection, the Assessors for the time being, shall have power to demand and receive the list of assessments from such infirm Constable or Collector, or from the guardian of such Constable or Collector as shall be *non compos mentis*, or from the Executors or Administrators of any deceased Constable or Collector, or from any person in whose hands the same may be, and to deliver the same to the Collector newly appointed.

* Stat. of 1791, ch. 22.

Another statute* has provided, that, in case any Constable or Collector of taxes decease before his perfecting the collection of any assessment committed to him to collect and pay in the State treasury; the Assessors, for the time being, of such town, shall nominate and appoint, at the charge of such town, some other fit person or persons to perfect the same collection, and enable and empower such person or persons to collect the same, by granting a warrant to him or them for that purpose.

It is further provided, by another statute,† that in case of the decease of any Constable or Collector, in any town or parish, before his having adjusted the accounts of his assessment to him committed to collect, for such town or parish; the Executors or Administrators of such Constable or Collector, shall, within two months after his decease, settle and make up accounts with the Assessors of the said town or parish, of such part of the assessment as was received and collected by the deceased Constable or Collector in his life time; with which, such Executors or Administrators shall be chargeable, in like manner as the deceased Constable or Collector should be, if living; and such Assessors shall, thereupon, procure and appoint, in writing, some suitable person, a Collector to perfect such collection; and the person so appointed is empowered and required to execute all such powers as were granted to the deceased Constable or Collector.

And if the Executors or Administrators of any Constable or Collector, so deceased, not having fully collected the assessment committed, shall fail of making up and settling the account of what was received by the deceased, as aforesaid, before the expiration of the time aforesaid, such Executors or Administrators shall be chargeable with the whole sum committed to their testator intestate, in case there be sufficient assets, in the same manner the deceased Constable or Collector should be, if living.

* Stat. of 1785, ch. 70. § 1.

† Stat. of 1785, ch. 46. § 5.

XII. *Of their power and duty on failure of a deficient Collector to satisfy a warrant of distress issued against him by the State Treasurer, and herein of their liability for the neglect of such duty.*

If any Constable or Collector,* so failing as aforesaid, have no estate to be found, whereon to make distress, and his person cannot be taken within the space of three months from the time a warrant of distress shall issue from the Treasurer as aforesaid, or, being taken and committed to gaol, shall not, within three months, satisfy the same; in such case, the town, whose Constable or Collector so fails of his duty, shall within three months from the expiration of the said three months first mentioned, make good to the Treasurer the sum or sums due or owing to the same, from such deficient Constable or Collector:

And the Assessors of such town having notice in writing from the Treasurer, of the failure of any Constable or Collector as aforesaid, shall forthwith thereupon, without any other or further warrant, assess the sum the said deficient Constable or Collector is deficient, upon the inhabitants and estates of such town, in manner as the sum so committed to such deficient Constable or Collector was assessed, and commit the same to some other Constable and Collector, with warrant to collect; and in default thereof, the Treasurer of the Commonwealth is directed and empowered to issue a warrant of distress against such deficient Assessors, for the whole sum which may remain due from such deficient Constable or Collector, which shall be executed in the same manner as in the statute is prescribed for serving other warrants of distress, which may be issued by such Treasurer.

Provided, however, that such Constable or Collector, failing of his duty aforesaid, for whose default the town is answerable, as before expressed, shall, at all times afterwards, be liable to the action or suit of the inhabitants, in their corporate capacity, for all such sum or sums as were *assessed* upon the same, through his defect, and for other *damages* occurring to them thereby.

* Stat. of 1735, ch. 46. § 5.

XIII. *Proceedings in case Assessors neglect to obey the warrant of the State Treasurer.*

By statute* it is provided, that all Assessors, chosen or appointed, shall duly observe all such warrants as, during the time of their office, they shall receive from the Treasurer or Receiver-General, pursuant to an Act or Acts made and passed by the General Court of this Commonwealth, for the assessing and apportioning any rate or tax upon the inhabitants or estates within the town or district, whereof they are Assessors; on pain that the Assessors of any town or district, failing of their duty required by such warrant of the Treasurer, shall forfeit and pay the full sum in such warrant mentioned, to be by them assessed, to the use of the Commonwealth; which shall be levied by distress and sale of the estates, real and personal, of such deficient Assessors, by warrant from the Treasurer, directed to the Sheriff of the county, or his Deputy, in which such town or district lies.

The Treasurer is authorized and required in such case, *ex officio*, to issue his warrant, requiring the Sheriff, or his Deputy, to levy the said sums accordingly; and for want of estate, to take the bodies of such deficient Assessors, and imprison them until they pay the same; which warrant, the Sheriff, or his Deputy, is empowered and required to execute accordingly.

The Court of Sessions, in the county where such deficient Assessors dwell, are directed and empowered forthwith to appoint other meet persons to be Assessors of such rates or taxes, according to the directions contained in the Treasurer's warrant, issued to the former Assessors; and the Assessors, who shall be so appointed, shall take the oath and perform the same duties, and be liable to the same penalties as the former Assessors.

XIV. *Duties of Assessors when the Town-Treasurer is chosen Collector, under the Act of 1815.†*

The Assessors of any town, which shall, at their annual

* Stat. of 1785, ch. 50. § 4.

† Stat. of 1815, ch. 130. § 4.

meeting, regulate the collection of their taxes, agreeably to the provisions of this Act, shall assess their taxes in due form, and deposit the same in the hands of the Treasurer for collection, together with a warrant according to law, for that purpose, after he shall have been duly qualified, together with his deputy or deputies, and at the same time shall post up notifications thereof, together with a copy of the second section of this Act, in one or more public places within said town.

XV. *Of the compensation of Assessors and of their general liability for neglect or misconduct in their said office.*

The Assessors of the several towns or districts, in this Commonwealth, shall be entitled to receive out of the Treasury of such town or districts, each, the sum of one dollar for every whole day, that he shall be necessarily employed in that service; together with such additional compensation, as the towns may, at any meeting legally warned, think it proper to allow. Stat. 1834.

XVI. *Of the liability of Assessors.*

Assessors of cities, towns, districts, parishes or religious societies, shall not be made responsible for the assessment of any tax upon the inhabitants of their corporations whenever *required*, by the constituted authorities thereof; but the liability if any, shall rest solely with said corporation, and the assessors shall only be responsible, for their own integrity and fidelity. (1)

Before the passing of this Act, suits were uniformly sustained against Assessors, where a Tax was assessed, which was not within the lawful power of the corporation to assess; as the citizen had no other adequate remedy.—

Stetson *vs.* Kempton, 15 Mass. Rep. 283.

Thayer *vs.* Stearns, 18 Mass. Rep. 482.

The remedy is now, to bring the action against the corporation, and draw the money from the Treasury that has been benefited by the illegal tax. (2)

Thus, upon the trial of an action against assessors, the plaintiff was not permitted to shew the illegality of a tax, *nor the unlawful proceedings of the assessors*, where no

(1) Stat. 1823. ch. 138. (2) Amesbury Man. *vs.* Amesbury, 17 M. R. 461.—*Swannier vs. Dorchester 1st Parish* 4 Pick. 364.

fraud was imputed to them. *Ingraham vs. Doggett & al.* 5 Pick. 453.

Assessors in making taxes, which they are required by their towns or parishes to make, are liable only for fraudulent and corrupt conduct; and for unintentional errors and mistakes, their corporations only are responsible. *Ibid.*

But where assessors tax a person, who is not a member of the parish or religious society, for which they act, they may be held liable in trespass.

Gage vs. Currier & al. 4 Pick. 399.—

So, where assessors having assessed by mistake certain persons who were not liable to be taxed in the parish, recall the tax bills, from the Collector, after he has partly executed his warrants, and then re-assess the taxes upon the remainder of the parish; such re-assessment is void, and the assessors were held liable in trespass.

Inglee vs. Bosworth & al. 5 Pick. 503.

In this case the money might likewise have been recovered from the Parish Treasury, together with the costs of making the distress. *Ibid.*

[See Appendix. Enginemen. Militia.]

AUCTIONEERS.

1. *Of the licensing of Auctioneers, and the penalty for selling at Auction.*

No person,* unless he be licensed by a major part of the Selectmen of the town to which he belongs, shall sell at public vendue or outcry any goods or chattels whatsoever. And if any person, without such license, shall sell any goods or chattels at public vendue or outcry, he shall forfeit and pay a sum not exceeding *six hundred dollars* for each offence.

And if any tenant or occupant of a house or store shall knowingly permit or allow any person not licensed as aforesaid, to sell any goods or chattels at public vendue

* Stat. 1795, ch. 8.

in said building or any apartment or yard appurtenant to the same, he shall forfeit not less than *one hundred dollars*, nor more than *six hundred dollars*, to the use of the complainant.*

And the Selectmen or a major part of them, at a meeting held for that purpose, are empowered, by a writing under their hands, to license any suitable person or persons to make sale of goods and chattels in manner aforesaid ; for which license the person or persons receiving the same shall pay to the Selectmen granting it, for their use, the sum of *two dollars*. And the Selectmen are directed to record every license they may so grant, in a book to be by them kept for that purpose.

If the Selectmen refuse or neglect to grant such license after application therefor in writing, the applicant may appeal to the Court of Sessions for the county, first giving ten days notice to the Selectmen of his intention. And if the Court shall adjudge, after hearing the parties, that the request is reasonable, they may proceed to license the person so applying. Provided he first gives bond to the Selectmen, to pay all costs arising by the case being brought before the Court of Sessions.†

The Selectmen have no authority to grant such license, only at a meeting held expressly for that purpose, and of which all the Selectmen had notice, if practicable. The license must be signed at such meeting ; and if granted in any other manner it is void. Mass. Rep. v. 505.

No license thus granted, shall be of any effect to exempt any person or persons from the penalties incurred by any breach of the Act, unless such license shall have been made and granted within one year next preceding such sale.

But this Act does not extend to sales made by sheriffs, deputy sheriffs, coroners, constables, collectors of taxes, executors or administrators, or any other person who is or may be authorized or required by law, to sell goods, chattels, or lands, at vendue or outcry.

* Stat. of 1814, ch. 46. † Stat. of 1815, Ch. 29, and stat. of 1819, ch. 132.

II. *The penalty incurred by an Auctioneer for receiving goods for sale of minors or servants ; or for selling his own goods before sun-rise or after sun-set.*

If any person or persons thus licensed, shall receive any goods for sale, at public vendue or outcry, of any servant or minor, knowing such person to be a servant or minor ; or shall sell any of his own goods, before sun-rise, or after sun-set, at public vendue or outcry, he shall forfeit and pay a sum not less than *fifty dollars*, no more than *one hundred and seventy dollars*, for each offence.

If one claiming to act as Auctioneer is sued for this penalty, he is not estopped from denying that he was regularly licensed as an Auctioneer. Mass. Rep. v. 505.

III. *Duty of Auctioneers to keep an account of the persons of whom they receive, and to whom they sell goods.*

Every person thus licensed, shall keep a fair and particular account of all goods and chattels, sold by him as aforesaid, of whom the same were received, and of the names of the persons to whom the same shall have been sold.

IV. *Duties of Auctioneers, under the Act imposing a duty on Sales at Auction.**

1. What property is liable to duty.

All real and personal estate, which shall at any time be exposed for sale at public auction or vendue within this Commonwealth, from and after the first day of April next, by an Auctioneer or other person, duly authorized to sell real and personal estate at auction or vendue, shall be subject to the following duties, each and every time such real or personal estate may be sold or bought in, *to wit* :—All personal estate, excepting ships and vessels, *one dollar* for every *hundred dollars* of the value for which the same shall be sold ; and all real estate, ships and vessels, at *fifty cents* for every *hundred dollars* of the value

* Stat. 1822, ch. 87 :—1824, ch. 129.

for which the same may be sold, and at and after the same rate for every greater or less sum, to be paid by the person who shall so sell the same. And in all cases where the Auctioneer or owner of such goods so exposed for sale, or any person who shall be employed by them, or either of them, shall be the highest bidder, the said real or personal estate shall be subject to the payment of the same duties as if they had been sold to any other person: *Provided*, that nothing in this Act contained shall extend to any sale or sales, at public auction or vendue, of any real or personal estate, made pursuant to or in execution of any rule, order, decree, sentence, or judgment of any court or judicial officer of this Commonwealth, or of any court of the United States, having jurisdiction within this Commonwealth, or by order of law, or by force of any warrant of distress, for the payment of taxes, or other cause for which a distress is allowed by law; or to any sale or sales, made by or on behalf of executors, administrators or guardians of estates of citizens of the United States, lying and being within this Commonwealth, or to any sale or sales of pews, in meeting-houses or churches.

2. Penalty for selling without complying with the provisions of the Act.

If any person not licensed and qualified, according to the laws of this Commonwealth, and the provisions of this Act, shall sell, or attempt to sell, any real or personal estate whatsoever, by way of public auction or vendue, within this Commonwealth, he shall be considered guilty of a misdemeanor, and shall, on conviction, be fined in a sum not exceeding *five hundred dollars*, for each and every offence, at the discretion of the court before whom such convictions shall take place. And if any person, shall sell any real or personal estate, by way of public auction, without having given bonds, he shall forfeit the sum of *five hundred dollars*, for every time he shall so sell without giving bond; to be recovered by any person who shall sue for the same; one moiety thereof to the person who shall sue therefor, and the other moiety to the *use of the Commonwealth*.

3. How the Bonds to the State Treasurer shall be taken.

By the third section of said Act, each Auctioneer shall give a bond, in a reasonable penalty, with two sufficient sureties to the Treasurer of this Commonwealth, and his successor in office, conditioned for the payment of the duties herein before mentioned, to the Treasurer of this Commonwealth, and also that he shall, in all things, well and truly conduct and conform himself, according to the true intent and meaning of this Act; which bonds shall be taken by the persons who granted the license, and be by them duly transmitted to the Treasurer of this Commonwealth, with an endorsement of their approval thereon. And all Auctioneers who shall hereafter be appointed, before they sell or attempt to sell, any real or personal property, shall give bonds, to be approved and transmitted as aforesaid, by the authority granting the license.

4. The manner of keeping his account of Sales, and of rendering the same to the Treasury, and herein of the oath to be taken by the Auctioneer, and his compensation for paying over the duties.

Every Auctioneer, who shall sell any estate, described in this Act by way of public auction, shall, on the first days of *June* and *December*,* next after any sales shall be made, or as soon afterwards as may be, not exceeding sixty days, render to the Treasurer of this Commonwealth, a true and particular account in writing, of the monies or sum for which any and all real or personal estate shall have been sold, carefully distinguishing between sales of real and personal estate, and between sales whereby the whole of any real or personal estate sent, entrusted or consigned to such Auctioneer, has been actually sold at public auction, and other sales, whereby some part or parcel thereof has been sold at public auction, with the design and effect to ascertain and fix a price for the whole or any other part thereof, at every sale at auction by him made, from and after the said first day of April next, or from the time that the last account was rendered by him, in conformity to this Act.† And all

* Stat. 1824, ch. 129, sec. 2.

† Unless the duties for the first six months in any one year shall

sales at auction, of any part or parcel of any real or personal estate sent, entrusted or consigned to an Auctioneer, for sale, with the design and effect to ascertain and fix a price for the whole, or for any part thereof, without exposing the whole, or such other part, to public sale, shall be deemed and taken to be sales at auction, within the meaning of this Act, to the whole amount of the real or personal estate so sent, entrusted or consigned as aforesaid, and whereof the sale is so effected, whether the same be conducted and effected by the Auctioneers, or by any person or persons acting as a Commission Merchant, Factor, or Agent, or by the owner or owners thereof. And the whole amount of such real or personal estate shall be returned by said Auctioneer, in his accounts, to the Treasurer of this Commonwealth, in the same way and manner as if the same had been all sold at public auction. And every account shall have endorsed thereon, the following oath or affirmation, substantially in the form following, to wit:—*I*

do solemnly and sincerely swear, (or affirm) that the account to which I have subscribed my name, contains a just and true statement of the amount of all the real and personal estate, sold or struck off by me at public sale, or sold by me at private sale, on commission, or whereof any part or parcel has been sold or struck off by me at public sale, with the design and effect to ascertain and fix a price for the whole or any part thereof, subject to duty, pursuant to the Act, entitled "An Act imposing a duty on sales at Auction," within the time mentioned in said account; and that I have carefully examined all entries and memoranda of sales made by me at auction and at private sale, on commission, within the time mentioned in said account, and that this account exhibits the whole amount thereof, liable to pay a duty, pursuant to the Act aforesaid, according to my best knowledge, information and belief.

And the Auctioneer who subscribes the account, shall also subscribe the foregoing oath or affirmation, and make oath or affirmation thereto, before some Justice of the

amount to ten dollars, the auctioneer, is bound only to make his return annually, which is to be on the first day of December. Stat. 1894, ch. 189.

Peace; and the said Justice shall certify the same. And every Auctioneer shall, upon rendering such account, so authenticated, pay the amount of duty upon such account of sales, into the treasury of the Commonwealth. And every Auctioneer shall receive, as a compensation, *four per cent.** on all the duties he shall so pay into the treasury.

[But upon the sale at public auction of the stocks of the United States, of the several States, of shares of the stocks of incorporated banks, insurance and manufacturing companies, there shall be paid, but one tenth of one per cent. upon the amount of such sales.†]

5. Penalty for any person selling, on the day of the sale, any of the property advertised to be sold at vendue.

No person whosoever shall, on the day of any sale, at public auction, dispose of, at private sale, any of the property which has been advertised or exposed to sale at public auction, and which, if sold at public auction would be liable to the duty imposed by this Act, under the penalty of *one thousand dollars*, to be recovered by any person who shall sue for the same.

6. Penalty for fraud or deceit in the execution of this Act, or for eluding or defeating the operation thereof.

If any person shall be guilty of any fraud or deceit, in the execution of this Act, or in eluding or defeating the operation thereof, every such person, on conviction thereof, shall forfeit the sum of *one thousand dollars*, as a penalty for every such offence, to be recovered by any person who will sue for the same; one moiety thereof, when recovered, to be for the use of such person, and the other moiety thereof to the use of the Commonwealth. And every person who shall subscribe and swear wilfully and falsely, to any account transmitted or delivered to the Treasurer of this Commonwealth, according to the provisions of this Act, shall suffer the pains and penalties which by law are prescribed for wilful and corrupt perjury.

7. Duty of Treasurer, as to furnishing blank forms.

It shall be the duty of the Treasurer of the Common-

* Stat. 1824, ch. 129. § 2.

† Stat. 1825, ch. 163.

wealth, to prepare and furnish blank forms for the bonds and returns to be given and made as aforesaid.

V. Leases and underleases by auction.

1. For a gross sum subject to a duty.

The stat. of 1830, ch. 61. provides that all contracts and engagements for any lease or underlease of any real estate, or for the assignment of any lease or underlease of such estate, which shall at any time be made or entered into, by way of sale or bidding at public auction or vendue, if the same shall be sold or bid off for a gross sum, shall be subject to a duty of fifty cents for every hundred dollars of such gross sum or value for which the same shall be sold, each and every time such contract or engagement shall be so sold or bought in; and at and after the same rate for every greater or less sum, to be paid by the person who shall sell the same, whether the auctioneer or the owner of the property, or any other person, shall be the highest bidder for the same.

2. So of leases for an annual or other rent.

And if such contract or sale shall be for an annual rent, or for a sum payable annually or otherwise by instalments, then the gross amount of such rent or instalments, for any term not exceeding seven years, shall be subject to a duty of fifty cents for every hundred dollars of such amount; and for any term beyond seven years and not exceeding fourteen years, to a duty of thirty five cents for every hundred dollars; and for any term beyond fourteen years and not exceeding twenty one years, to a duty of twenty five cents for every hundred dollars of such amount; and at and after the same rate for any greater or less sum, each and every time such contract, engagement, or property shall be made, entered into, or sold as aforesaid, to be paid by the person who shall sell the same, whether the auctioneer, or the owner of such property, or any other person shall be the highest bidder therefor.

3. So of contracts by auction for sale, &c. of goods or other personal property.

All contracts and agreements for the sale, delivery, fur-

nishing, or supplying of any goods, wares, merchandize, or any other personal property whatsoever, which shall at any time be made or entered into, by way of sale or bidding at public auction or vendue, shall be taken and deemed to be a sale of personal estate, and shall be subject to a duty of one dollar for every hundred dollars of the whole value or amount of goods, wares, merchandize, or property, for the sale, delivery, furnishing, or supplying of which such contract or engagement shall be made or entered into, each and every time such contract or engagement shall be so made, sold, or bought in, and at and after the same rate for any greater or less sum, to be paid by the person who shall so sell or negotiate the same, whether the auctioneer or any other person be the best bidder therefor.

4. So of sale for purpose of fixing rent or price of real or personal estate.

Where any sale or bidding, at public auction or vendue, shall be upon the rent of any smaller parcel of real estate, for the purpose of fixing and determining the rent or price of any larger parcel of real estate, or upon any contract for a lease or underlease of real estate for a shorter term, for the purpose of fixing and determining the rent or price for any longer term, and where such sale or bidding, in regard to any goods, wares, and merchandize, or other personal property, or any contract or engagement to sell, deliver, furnish, or provide the same, shall be of or upon any less quantity, for the purpose of fixing and determining the price of a larger quantity, in every such case, the whole value or amount of the property so sold, transferred, contracted for, or negotiated by the terms or conditions of such auction or vendue, shall be subject to duty, in the same manner as if each and every part thereof had been regularly sold by auction.

5. Forfeiture of auctioneers' neglect of payment.

If any auctioneer shall neglect to pay into the treasury of this Commonwealth, the amount of duty for which he is liable, within the space of sixty days from the first day of June or first day of December, on which he is required by law to make his return, every such auctioneer shall *forfeit the commission of four per centum allowed him by*

law, and shall also be held to pay to the treasurer, interest at the rate of one per centum per month upon the nett amount of said duty, from the expiration of said sixty days, until he shall pay the same, to be recovered by an action on the bond of such auctioneer, in any court proper to try the same.

VI. What duty is to be paid on corporate property.

By Stat. 1833. ch. 89. in lieu of all duties heretofore imposed by law on sales at auction, of stock or shares in the corporate property of turnpike, bridge, canal, rail road and railway companies, and in incorporated athenaeums and libraries, there shall be paid one tenth of one per centum on the amount of such sales.

The sale of pews, or the choice of pews, or leases of the same, when for the benefit of the society or corporation, is exempt from duty. Stat. 1824. ch. 147.

COLLECTORS OF TAXES.

- I. The choice of Collectors ; their oath of office ; the penalty which these officers incur on refusal to appear and take such oath, or to serve in such office ; and herein of the proceedings in such case.*

The qualified voters of any town, at the same time they choose constables,* may, if they see cause, likewise choose some meet person or persons to be Collectors of the rates or taxes that shall be assessed upon such town, and agree upon what sum shall be allowed and paid unto such Collector or Collectors, for his or their service ; but if such Collector or Collectors so to be chosen, shall refuse to serve, or if no Collector shall be chosen ; then the constable or constables of such towns shall collect and gather such rates and taxes.†

* Stat. 1785, ch. 70, § 1.

† For form of Collector's oath, see Oaths.

II. *Proceedings in case any town neglects to choose a Constable or Collector.*

When any town shall neglect to choose a Constable or Collector* to gather the rates or taxes, granted by the General Court; in such case the sheriff of the county, or his deputy, are empowered and directed to collect such rates or taxes, having received an assessment made of the proportion of the several persons rateable in such town, together with a warrant under the hands of such assessors as shall be appointed by the sessions, in the county where such deficient town lies, or under the hands of the assessors of such town.

And the sheriff, or his deputy, upon the receiving such assessment, and warrant for collecting it, shall forthwith post, in some public place, of the town assessed, an attested copy of such assessment and warrant, and shall make no distress for any of the sums so assessed, till after thirty days from his posting it up; and any person or persons paying the sum or sums respectively assessed on him or them to the sheriff, before the expiration of the aforesaid thirty days, shall pay at the rate of *five per centum* over and above the sum assessed, to the sheriff for his fees, and no more; but all such as shall neglect to pay the sum or sums assessed beyond the thirty days after posting up the copy of the assessment as aforesaid, shall be proceeded against by the sheriff, by way of distress or commitment to jail, in the manner Collectors are† directed and empowered to distrain or to commit to jail; and the said sheriff, or his deputy, may require suitable aid for that purpose; and they shall each one pay the fees for the sheriff's service and travel, as in other cases where distress is made, or the person committed.

III. *The power and duty of Collectors in relation to unimproved lands of non-residents, and improved lands of proprietors living without the Commonwealth.*

Where no person appears to discharge the taxes on the

* Stat. 1785, ch. 70.

† Stat. 1785, ch. 70, § 2.

unimproved lands of non-resident proprietors,* or improved lands of proprietors living out of the limits of this Commonwealth, to the Collector, he shall advertise in the public newspapers of the printer to the General Court, for the time being, three weeks successively, the names of all such proprietors, where they are by him known, with the sum of the taxes assessed on their lands respectively, and also the time and place of sale; and where they are not known, he shall in the same manner, publish the sum of the taxes on the several rites, numbers of lots, or divisions; and where the name of the place in which such lands lie, may have been altered by any act of this Commonwealth, within three years next preceding such advertisement, he shall express not only the present name, but the name by which the same was last known; and, in either case, shall post the same in some convenient and conspicuous place in the same town where the said lands lie, and in three of the adjoining towns, at least, for the term of three weeks previous to the time appointed for such sale; and if no person shall appear thereupon to discharge the said taxes, and all necessary intervening charges, then the Collector aforesaid shall proceed to sell at public auction, to the highest bidder, (after waiting two hours from the time appointed for said sale) so much only of the said lands as shall be sufficient to discharge said taxes, and the necessary intervening charges, having first given notice of the intended sale thereof, and the time and place when and where the same shall be made as aforesaid; and shall have power to adjourn from day to day (if necessary) to complete the said sale, not to exceed three days (waiting as aforesaid;) and shall give and execute a deed or deeds to the purchaser or purchasers, his or their heirs and assigns, expressing therein the cause of such sale, and saving to the aforesaid proprietor or proprietors the right of redemption of any lands so sold, within any time for the space of two years from the time of such sale; and the same shall be re-conveyed to him or them, the said proprietor or proprietors, on paying, within two years as aforesaid, the sum such land sold for,

* Stat. 1785, ch. 70.

with interest at the rate of *ten per cent. per annum* on said sum, together with all necessary intervening charges.*

Provided, however, that the purchaser or purchasers as aforesaid, shall not make any strip or waste on the premises, until the time of redemption shall have expired; and if the said purchaser or purchasers shall make any strip or waste on the premises as aforesaid, he or they shall be liable to pay all damages to the original owner or owners, in as full and ample a manner as if he or they had not purchased the same.

IV. Duty of collectors in certain cases, previous to the advertisement of non-resident proprietors' land for sale for non-payment of taxes.

Where any non-resident proprietor of any land† in any town, within this Commonwealth, shall have authorized, in writing, any person residing and dwelling in any such town, as his attorney, to pay the taxes imposed upon such lands, and such written authority shall have been lodged with, or recorded by the clerk of such town, (which such clerk is required to do, upon application of such attorney, and payment of *one shilling*, for filing or recording the same;) no Collector of taxes in any such town, shall proceed to advertise the sale of any lands of any such non-resident proprietors for non-payment of any taxes committed to them to collect, without first notifying and demanding payment of such tax of such attorney, either personally or by written notice and demand, left at his dwelling-house, nor till after the expiration of two months from and after such notice.

And in case such Collector shall have occasion, after said two months, to advertise such lands for sale, upon neglect of payment of the taxes, his affidavit, made before a Justice of the Peace, and recorded by the clerk of such town, (who is required, upon request of such Collector, to record the same) before any sale be made, that such personal or written notice was given, and expressing the time

* Taxes upon the lands described in this section are a lien upon the land only, and not a personal charge.—*Rising vs. Granger*.—Mass. Rep. i. 47.

† Stat. 1794, ch. 67.

of giving the same, shall be admitted as legal evidence thereof.

V. Of their power and duty in relation to persons taxed for real estate in their possession, but who are not owners thereof.

In all cases where any person who is taxed for any real estate in his possession,* is not owner or proprietor of such estate, it shall be the duty of every Collector, on whose rate-bill the name of such person shall be borne, to demand, as soon as may be after such bill shall be regularly committed to him, the full amount of the taxes that may be therein assessed upon such person ; and all cattle, sheep, horses, swine, or other stock, and also all the produce of any such estate which then, or *within nine months* from the time such assessment shall be committed as aforesaid, shall or may be found on the premises belonging to the owner or proprietor of such estate, or to any tenant thereof taxed as aforesaid, shall be liable to be taken and disposed of by public auction, in manner as is provided by law in case of distress taken for taxes, in discharge in part or in whole of any sum or sums assessed upon any such person as aforesaid.

And if any stock or produce which may be taken and disposed of as aforesaid shall be the property of the proprietor or owner of the land assessed as aforesaid ; in every such case such person assessed as aforesaid shall be held to make full satisfaction to the owner or proprietor of such stock or produce, and the Collector making distress shall not be chargeable with the same.

But if the person assessed as aforesaid shall remain on such estate or in the town or parish where the same may lie *for the space of nine months* next after the rate-bill shall be committed to any such Collector, as aforesaid, the said Collector shall have no other remedy than against the person or property of the person assessed as aforesaid, unless it shall appear that there was no sufficient distress to be found upon the premises within that time, and that such Collector was unable to collect the sum or sums due from

* Stat. 1785, ch. 70.

the person assessed as aforesaid, within the like term; in which case it shall be lawful for such Collector to proceed to sell so much of said real estate as may be necessary to discharge the said assessment and charges, in the same manner as is provided for the sale of lands belonging to non-resident proprietors for the non-payment of taxes; provided such sale shall be made within the term of one year from the time such tax shall be committed to such Collector.

VI. *Of their power and duty, where owners or tenants of improved lands do not reside where such lands lie.*

Where the owner or tenant of any improved lands,* liable to pay taxes, shall not reside, or be an inhabitant of the town or parish, in which such lands lie, and no stock, corn, or hay, can be found upon the said lands, whereof the Collector may make distress to satisfy such sum or sums, as from time to time such lands shall be assessed, either to the State, county, town, or parish; in such case, any Justice of the Peace in the county where the owner or tenant of any lands lives, upon application to him made, in writing, by the Collector to whom the list, wherein such lands shall be assessed, shall be committed, and upon sight of the same, or an authenticated copy thereof, is empowered and required to grant a warrant unto the constable of the town or place where such occupant dwells or resides, to distrain such owner or occupant, by his goods or chattels, the full sum at which such lands are set in such list, with the charges occasioned by making such distress; and to satisfy the same by sale thereof, returning the overplus, if any there be, to the owner; and in case no goods or chattels can be found, whereon to distrain, to commit the party to the common jail of the county, there to remain until he pay and satisfy the sum or sums so assessed with the charges.

VII. *Of their power and duty in reference to persons who refuse to pay their taxes.*

If any person shall refuse to pay the sum or sums

* Stat. 1785, ch. 70.

which he shall be assessed as his proportion to any rate or tax, in the list committed to any Collector, under the hands of the assessors of such town or parish, upon demand thereof made by such Collector, by virtue of the warrant to him given, it shall be lawful for such Collector, and he is authorized and required, in such case, to distrain the person, so refusing, by his goods or chattels, and the distress, so taken, to keep for the space of four days, at the cost and charge of the owner thereof.*

And if the owner do not pay the sum or sums of money so assessed on him within the space of four days, then the said distress shall be openly sold at public auction, by the said officer, for the payment of the said money, notice of such sale being posted up in some public place in the same town or parish, forty-eight hours before the sale, and *after the expiration of the four days* aforesaid;† and the overplus arising by such sale, if any, over and above the charge of taking and keeping such distress, to be immediately restored to the former owner, with an account in writing of the sale and charges.

And if any person, assessed as aforesaid to the State or other tax, shall refuse or neglect to pay the sum or sums so assessed for the space of twelve days after demand thereof, and shall neglect to shew the Collector sufficient goods or chattels whereby the same may be levied; in every such case, he may take the body of the person so refusing, and him commit unto the common jail of the county, there to remain until the same be paid, or he therefrom be discharged by due order of law.

Provided, that in all cases where there are, in the opinion of the assessors, or a major part of them, just grounds to fear that any person assessed as aforesaid, may abscond before the expiration of the said twelve days, in such cases, it shall be in the power of the Collector to demand immediate payment. Collectors derive no authority from the common law, to sell a distress taken by them,

* Stat. 1785, ch. 70.

† By stat. 1791, ch. 23. it is provided, that it shall be lawful for any constable or collector to give the forty-eight hours notice of the sale of any distress by him taken, for the non-payment of taxes, *within the said four days*, and after such notice, to sell such distress, *after the expiration of the said four days*; any law to the contrary notwithstanding.

but their whole authority results from the statutes here referred to.—Mass. Rep. v. 403.

VIII. *Of their power and duty in reference to tax-debtors, who are about to remove from the Commonwealth, and whose taxes are made payable at two or more times of payment.*

When any State, or other rate or tax, shall be made payable at two or more several times, or days of payment,* and any person, being an inhabitant or dweller in any town within this Commonwealth, at the time of making such rate or tax, and being assessed thereunto, shall be about to remove from thence before the time that shall be prefixed for payment of the same, it shall be lawful for the Collector of the same town, to demand and levy the whole sum which such person may be assessed in his lists, notwithstanding the time for collecting the second part of such tax may not then have arrived; and in default of payment, to distrain for the same, or to take such other course for obtaining thereof as herein before provided.

IX. *When a tax becomes a lien upon real estate.*

The statute of 1823, ch. 133, sect. 9, called the *Tax Act*, provides that whenever any tax shall be assessed on any real estate, liable to taxation, said tax shall be a lien on said estate; and if the occupant or reputed owner, shall neglect to discharge said tax, for the term of fourteen days after demand made for the same, the person authorized to collect said tax may proceed in its collection from a sale of so much of the same, as may be necessary for the discharge of the tax and all costs incident to the collection of the same, in the same manner as Collectors of taxes may proceed to collect taxes assessed on lands of non-resident proprietors.

X. *Of their power and duty in reference to such persons borne on their rate-bills as shall decease, remove from the town, or, if a woman, shall intermarry, before payment of the tax.*

When any person shall remove from any town or place

* Stat. of 1785, ch. 70.

where he lived,* at the time of making the list of any State, town, county, or parish tax, not having before paid the respective sums set upon him by such lists, it shall and may be lawful for the Collector, to whom any such tax shall be committed, with a warrant to collect, to demand the sums assessed upon such person, in what town or place soever, within this commonwealth, he may be found; and upon refusal and neglect to pay the same, to distrain the said person by his goods or chattels; and for want of such distress, to commit the party to the common jail of the county where he shall be found; there to remain until payment be made.

If any owner or proprietor of land or other real estate, shall remove out of the town or parish, where said land or other real estate lies, after the same is assessed, to some other place within this Commonwealth, or out of the limits thereof; and shall neglect or refuse to pay the said assessment by the space of three months, from and after the time of such removal; and if the Collector cannot, within the said three months, find any personal estate belonging to such person so removed, sufficient to pay the same; then such Collector shall proceed to sell so much of the said land, or other real estate, as will amount to the assessment aforesaid, together with the charges of such sale, in the same manner as is provided for the sale of lands belonging to non-resident proprietors for the payment of taxes.

Where any person, duly rated in any town or parish, shall die before the payment of the same rates; and where any person, duly rated as aforesaid, shall remove out of the town, in which such person lived at the time such rates were assessed, before the payment of such rates; and where any unmarried woman, being duly rated as aforesaid, shall intermarry before payment of such rates; in all such cases, it shall be lawful for the Collectors of such town or parish to sue for such rates; and they shall have the like remedy for the recovery thereof, as other creditors have for recovering their proper debts.† No action can be maintained for the recovery of taxes, only in the cases above mentioned.—Mass. Rep. vi. 44.

* Stat. of 1785, ch. 70.

† Stat. 1789, 4; ch. 1785, ch. 53. § 3.

In actions of the above description, interest cannot be recovered by the Collector.—Mass. Rep. ix. 324.

XI. *Their power to command aid, when impeded in the execution of their office; and herein of the liability of such as refuse their aid.*

If any of the Collectors of the state, county, town, or parish taxes, when in the execution of their office, shall be hindered or impeded in collecting the taxes committed to them, it shall be lawful for such Collectors to require some meet person or persons to aid and assist them therein;* and all persons, so required, who shall refuse their aid and assistance, shall severally pay a fine to the poor of the town, where the offence may arise, not exceeding *forty shillings*, at the discretion of the Justice, before whom the conviction may be had, by complaint or information in writing, according to the circumstances of the case: Provided that it appears to the Justice, that the aid so demanded as aforesaid, was necessary. And on default of payment of the fine imposed, the Justice may order the offender to be committed to the common jail of the county, for the space of forty-eight hours.†

XII. *Their duty to exhibit accounts of moneys collected; and herein of the penalty which they incur for the neglect of such duty.*

The several Collectors of public taxes shall, once every two months at least,‡ exhibit to the selectmen of the respective towns to which they belong, a just and true account of all the moneys they have received on the several taxes committed to them, and produce the treasurer's receipts for all the moneys by them respectively paid into the treasury.

* Stat. of 1785, ch. 70. § 9.

† See also stat. 1782, ch. 61, whereby Collectors, having any list of assessment upon inhabitants of any adjacent lands, may command assistance, from any person within the limits of their respective towns, or from any of the inhabitants of said adjacent lands, in collecting the taxes so assessed; and any person refusing such assistance, is liable to the penalty mentioned above.

‡ Stat. of 1783, ch. 66.

If any Collector of public taxes shall neglect to exhibit his accounts in manner aforesaid, he shall forfeit and pay, for every neglect the sum of *two and a half per cent.* on the sum or sums committed to him to collect, to the use of the town of which he is or has been a Collector, to be recovered by such town in any court of law proper to try the same.

XIII. *Their liability for neglecting to make a seasonable collection and payment of moneys to the Treasurer of the State.*

If any Constable or Collector of taxes shall neglect to pay to the Treasurer of the commonwealth, such sum of money as ought by him to be paid, within the time limited by any statute or by any Assessors' warrant pursuant to law, the town or district, by which such constable or collector was chosen or appointed, shall respectively be liable to an action of debt for the recovery of such sum of money or tax, to be commenced by the said Treasurer and notice thereof served on such town or district fourteen days before the setting of the Court in which such action shall be commenced.

And the treasurers of counties shall severally have the same remedies against towns and districts, for the neglect of their constables or collectors of taxes which are given to the treasurer of the state. Stat. 1831. ch. 64.

XIV. *Proceedings where Collectors have had rates committed to them, and have removed or are about to remove from the Commonwealth.*

Where any collector, in any town or parish, shall have any rates committed to him to collect, and has removed,* or in the judgment of the selectmen, assessors, or treasurer of the said town, or the committee or treasurer of the parish, is about to remove out of this Commonwealth, before the time set in his warrant or warrants, to make payment to the several treasurers therein mentioned, or the time of payment be elapsed, and the treasurer

* Stat. 1783, ch. 10.

or treasurers has thereupon issued his or their warrant or warrants of distress, in either case it shall and may be lawful for the selectmen of such town, or committee of such parish, on their own motion, or at the request of their respective assessors or treasurers, to call a town or parish meeting, in due form of law, setting forth in their warrant the cause of such meeting, and requiring the voters qualified by law, at the said meeting, if the said voters shall think it proper, either by themselves or such person or persons as they shall appoint, to settle with the said Collector who is under either of the above mentioned circumstances, and who has or is about to remove as aforesaid, for the money he has received on the rate-bills that have been delivered to him, and demand and receive his said bills, and given him a discharge therefor; and at the said meeting may proceed to the choice of another Collector, who, upon non-acceptance, shall be liable to the same fine as if he had been originally chosen in the month of March [or April,] and the town or parish shall proceed to a new choice; and so *toties quoties*, until one is chosen who shall accept, and be sworn accordingly.

And the assessors shall make out a new warrant under their hands and seals, in due form of law, and shall deliver the warrant, together with the same bills, to the person chosen as aforesaid, to collect what shall be remaining due thereon; and the person so chosen is vested with the same authority to collect what shall then remain due on the same bills, as the Collector was to whom they were first committed.

And if any Collector, so removing or intending to remove himself out of this Commonwealth, shall refuse to deliver the bills of rates committed to him to collect, and all moneys collected by him thereon, and remaining in his hands, when demanded by the assessors or selectmen, he shall pay a fine of *sixty pounds*, to the use of the town or parish of which he was Collector; and shall remain liable to pay what shall remain due upon the bills committed to him to collect, as is by law provided.

XV. *The Fees of Collectors.*

In case of distress or commitment for the non-payment

of taxes, the officer concerned therein shall be entitled to the same fees as for levying executions, saving that the travel in case of distress, shall be computed only from the dwelling-house of the officer making such distress, to the place where the distress may be made.

XVI. *What Property is exempted from Distress.*

No distress shall be made or taken from any person, of his arms, or household utensils necessary for upholding life;* nor of tools or implements necessary for his trade or occupation, beasts of the plough necessary for the cultivation of his improved land; nor of bedding or apparel necessary for him and his family.

XVII. *What shall be deemed sufficient evidence that a Collector has posted notifications for the sale of Lands.*

The affidavit of any disinterested person, taken before a Justice of the Peace, of the posting notifications, required by law, for the sale of any land,† which shall be sold by any sheriff, constable or collector, in the execution of his office, may be used in evidence of the fact of notice, upon any trial of the validity of such sale; provided that such affidavit, made on one of the original advertisements, or on a copy of one of them, shall be filed and recorded in the registry of deeds, of the county or district where the land lies, within six months.

XVIII. *Power of a preceding Collector to perfect his collections after a succeeding Collector is chosen.*

When new Constables or Collectors are chosen and sworn, in any town or parish, before the former Collectors have perfected their collection of any tax to them committed to collect,‡ such former collectors are empowered to perfect all such collections, and may exercise the same powers and authority for collecting and enforcing the payment thereof as they might have done before other Collectors were chosen and sworn.

* Stat. 1785, ch. 46. † Stat. 1794, ch. 68. ‡ Stat. 1785, ch. 70.

XIX. Of the general liability of a Collector, and when his Warrant is a justification.

Executive officers, obliged by law to serve legal writs and processes, are protected in the rightful discharge of their duty. If the magistrate proceeds unlawfully in the issuing of process, he, and *not* the executive officer, is liable.

<i>Stetson vs. Kempton,</i>	<i>Mass. Rep. xiii. 282.</i>
<i>Stanford vs. Nichols,</i>	<i>do. 288.</i>

The same rule extends to collectors. If the assessors' warrant is within the scope of their authority, the Collector is justified.

The Collector has no superintendence of the assessors; no power of correcting them, or of refusing the assessment, upon the suspicion that errors have happened. He is subjected to the control of the assessors, and is obliged, under severe penalties to receive the assessment and enforce payment. *Colman vs. Anderson.—Mass. Rep. x. 118.*

In every case within the power of the assessors to decide, their warrant justifies the Collector, and he is holden to execute it; for he does not incur the penalty of their misdoings, or wrong estimates.—*Ibid. 119.*

When assessors so far exceed their powers as to *overlayings*, as to vacate the assessment, the warrant justifies the Collector, and the remedy for any person injured is against the assessors.—*Ibid.*

It would be dangerous to vest Collectors with the right of judging as to the liability of the proceedings of the assessors, previous to the assessment.—*Stetson vs. Kempton.—Mass. Rep. xiii. 283.*

The general rule in these cases is, that when the authority under which an officer acts is *voidable* only, he is justified by it; but not when the authority is *void*.—*Nichols vs. Thomas.—Mass. Rep. iv. 234.*

As when an officer was directed by his execution to take the *bodies* of the officers and members of a corporation, on a judgment against the corporation; the precept

being absurd and impracticable, the officer was not justified.—*Ibid.*

But the court say, if an execution should illegally issue against the body of an executor or administrator, the officer would be justified in making the arrest.—*Ibid.*

XX. *Proceedings when any town shall appoint the Treasurer Collector of Taxes.*

1. Power of such Officer, and of his Deputies.*

By the law of 1815, chap. 130. sect. 1. towns are authorized at their annual meeting to appoint their treasurer a Collector of Taxes; and the treasurer so appointed shall be, and hereby is empowered to substitute and appoint under him such number of deputies or assistants as may be necessary; which deputies or assistants shall give bonds for the faithful discharge of their duty, in such sums, and with such sureties, as the selectmen of such town shall think proper; and the said Collector and his deputies shall have the same powers as are vested by law in Collectors of Taxes, chosen by virtue of the Act now in force for that purpose.

2. Discount to be made upon such Taxes as are punctually paid.

That all the inhabitants of such towns, who shall voluntarily pay the said Collector, or his deputy, within thirty days next after the delivery of their tax-bills, the amount of their respective taxes, shall be entitled to an abatement of such sum as said town at their annual meeting may agree upon, on the amount of their said taxes; and all such inhabitants as shall voluntarily pay their taxes to the said Collector or his deputy, within sixty days after the delivery of their tax-bills, shall be entitled to an abatement of such sum as may be agreed upon as aforesaid, on the amount of their said taxes; and all such inhabitants as shall voluntarily pay to the said Collector or his deputy, within one hundred and twenty days after the delivery of their tax-bills, shall be entitled to an abatement on the amount of their said taxes, of such sum as may be agreed upon as aforesaid.

* Stat. of 1815, ch. 130.

3. Power as to persons who do not pay at the times specified, and as to those whose credit is doubtful.

All such taxes as shall not have been paid in agreeably to the provisions of the second section of this Act, shall and may be collected by the Collector or his deputy or deputies, agreeably to the Act now in force for that purpose, passed March 16, 1786, as also all taxes from persons whose credit they may consider doubtful at any time within the time specified in the aforesaid second section.

4. Town to issue a warrant against delinquents, directing the Sheriff or Constable to collect arrears of taxes.*

Any town-treasurer who is also chosen Collector, pursuant to stat. of 1815, ch. 130, may issue a warrant† of the same general tenor, with the warrant issued by assessors for collecting taxes.‡ And is to be returnable to the treasurer and collector, within thirty days from the date. But this procedure is not to take from the treasurer his right to distrain, where there is a probability of losing the tax by delay.

The officer having said warrant is to have the same authority and power as Collectors of taxes now have, and is to be entitled to the same fees. Provided, however, the said officers before they serve said warrant, shall serve upon the delinquent a summons from the treasurer and Collector, stating the amount due; and that unless the same is paid into the town treasury within ten days from the time of leaving said summons, with twenty cents for said summons, property will be distrained according to law.—*Stat. of 1807, ch. 134.*

XXI. Their duty as it respects furnishing the Selectmen with the evidence to enable them to make a List of Voters, and the penalty for their neglect.

It is the duty of the several Collectors of State or county taxes, in the several towns within this Commonwealth, to keep an accurate and true account of every person's name, from whom they receive payment of a State or county tax, and of the time of such payment, and, upon

* *Stat. 1807, ch. 134.*

† *Stat. 1786, ch. 50 § 6.*

‡ *Stat. 1817, ch. 69.*

request, therefor, to deliver to the person paying the same, a receipt, specifying the name of the person paying the same, and the time of such payment, which shall be received and considered as presumptive evidence thereof. And the said Collectors shall annually, fifteen days before the first Monday in March, make out and deliver to the selectmen of the town in which they reside, a true and accurate list of all persons from whom they shall within the year then next preceding have received any such payment, specifying the time of payment, or shall exhibit and deliver to the selectmen the original account by them kept, of such payment. And the selectmen shall, at least ten days before the first Monday in March, and ten days before the second Monday in November, annually, meet together, and make out alphabetical lists of all the persons qualified to vote for any public officers; and they shall, at least ten days before the first Monday in March, and ten days before the second Monday in November, annually, cause such list to be posted up, at two or more public places, in their respective towns: And they shall be in session, for a reasonable length of time, within forty-eight hours next preceding all town meetings, for the choice of any officers, for the purpose of correcting the aforesaid list of voters; and such session shall be holden for one hour at least, on the day of such meeting, and before the opening of the same; and of the time and place of their meeting for this purpose, they shall give notice on the lists posted up as aforesaid. And it shall be the duty of the selectmen or moderator, to be provided with a complete list as aforesaid, at such election; and no person shall vote at any election, whose name shall not have been previously placed on said list nor until the selectmen or moderator presiding at such meeting, shall have opportunity to find his name on the lists aforesaid. *Stat. 1822. Ch. 104. § 2.*

And by stat. 1833. ch. 102. it is the duty of the several Collectors of state and county taxes in the several towns and districts, whether the time for which they were respectively chosen shall have expired or not, twice in each year, viz. once in the month of February, not more than twenty days, nor less than fifteen days before the first Monday in March, and once in October, not more than

twenty days, nor less than fifteen days before the second Monday of November, to return to the Selectmen a true and accurate list of all persons from whom they shall have received payment of any state or county tax subsequent to the time of making the next preceding return.

Any Collector who shall neglect to return a list of persons, of whom he has received payment of any taxes, as required by this Act, shall forfeit and pay the sum of *one hundred dollars* for such neglect; and any Collector, who shall make a false return, as regards any part of the list returned by him to the selectmen, shall forfeit and pay the sum of *twenty dollars*, for each and every name, in which the said Collector may have made a false return; which penalties may be recovered by an action of the case, one half to the use of the town in which the offence is committed, and the other half to the use of the person who sues for the same. Stat. 1822. ch. 104. § 6.

CONSTABLES.

THE power and duties of this most ancient and responsible officer, have been imperfectly understood by many of our citizens. But it is hoped that in a community enlightened like ours, there will be no occasion for applying the remark made by one of the sages and brightest ornaments of the law.*

The office is either ministerial, in obeying warrants and other precepts, or is original, as a conservator of the peace at common law.

- I. *How these officers are chosen and sworn; who are exempted from serving in such office; penalty in case a person chosen to such office and not exempted, refuses to serve; mode of recovering such penalty.*

A Constable is a town officer, and, in the manner of

* Constables (says Judge Blackstone) are armed with large powers arresting, imprisoning, breaking open doors and the like; of the extent of which powers, considering what manner of men are for the most part put into this office, it is perhaps very well that they are generally in ignorance.—3 Black. Com. 356.

other town officers, is chosen annually in the month of March or April.

No person shall be obliged to serve in any town office two years successively;* nor shall any person in commission for any office, civil or military, church officer, member of the council, senate, or house of representatives, for the time being, nor any one who has served in the office of a Constable or Collector of any town, district, parish, or precinct, within seven years, be obliged to serve in the office of a Constable.

But every person chosen to the office of Constable, and not exempted as aforesaid, who shall refuse to take the oath to that office prescribed, and to serve therein, if he be able in person to execute the same, shall forfeit and pay, to the use of the town, the sum of *five pounds*; and if in Boston, Salem, or Newburyport, *ten pounds*, and shall, if present, forthwith declare his acceptance or refusal; and in case he shall not declare his acceptance, the town shall proceed to a new choice, and so from time to time, until one shall accept and be sworn.

And any person who shall be present and declare his refusal to serve in the office of Constable, or who shall neglect, after being summoned to take the oath of office, for the space of seven days next after the summons, and shall also neglect to pay the fine aforesaid, shall, upon the application of the town-treasurer, be summoned before the Court of Common Pleas in the county in which such town lieth; and a certificate under the hand of the clerk, or two of the selectmen, certifying that such person was legally chosen to the office of Constable, shall be admitted as evidence of the fact.

And if the person summoned shall make default, or appearing, shall not shew sufficient cause to the court for his refusal, the court shall order a warrant under the seal thereof, directed to any of the Constables of the same town then in office, to levy the fine by distress and sale of the offender's goods and chattels, returning the overplus, (if any there be) together with the costs arising on such prosecution; and for want of goods and chattels, to commit the delinquent to prison until the same shall be paid.

* Stat. 1785, ch. 75.

II. *In what case, Constables are, ex officio, Collectors of Taxes.*

The qualified voters of any town or district, at the same time they choose Constables, may, if they see cause, likewise choose some meet person or persons to be collector or collectors of the rates or taxes that shall be assessed upon such town or district, and agree upon what sum shall be allowed and paid unto such collector or collectors, for his or their services; but if such collector or collectors, so to be chosen, shall refuse to serve, or if no collector shall be chosen, then the Constable or Constables of such town, or district, shall collect and gather such rates and taxes.

III. *Power of Constables relative to the service of Writs and Warrants.*

Any Constable is authorized,* to serve upon any persons in the town to which he may belong, any writ, summons, or execution, in any personal action, where the damage sued for or recovered shall not exceed *seventy dollars*, and return thereof to make to the court to which the same may be returnable.

By Stat. 1830. ch. 127. Constables may serve any legal process within any unincorporated place annexed to their respective towns, for the purpose of assessing and paying state or county taxes, in the same manner, and under the same limitations, as if such place were a part of such town.

Where the sheriff or his deputy is a party to a writ of replevin, the writ, in cases where the sum does not exceed *twenty pounds*, may be directed to a Constable, and by him be executed.†

Any Constable shall have authority,‡ in the execution of the warrant or writ to him directed by lawful authority, to convey, as well any prisoner or prisoners, as things that they may have taken into their custody, either to the Justice issuing such warrant or writ, or to the common jail or house of correction of the county where such Con-

* Stat 1795, ch. 41. † Stat. 1789, ch. 26. ‡ Stat. 1795, ch. 68.

stable is an inhabitant, according as in the writ or warrant may be directed.

So Constables must execute coroners' warrants for summoning jurors, to hold an inquisition upon issue of a dead body.

They shall also repair to the place where the dead body is, at the time mentioned, and there make due return of their warrants. The penalty for neglect in this behalf is *ten dollars*.—*Stat. of 1783, ch. 43. sec. 2.*

By stat. of 1823, ch. 39, he is to summon only six jurors to appear before the coroner upon an inquisition.

IV. *Their duty to notice and inform of certain offences, and of their power to act without a Warrant.*

It is the duty of Constables to make the proclamation to rioters, prescribed in the riot act; and to use their best endeavours for their dispersion.*

They are also bound to prosecute for any breaches of the Sabbath Act.†

It is also their duty, in case any person shall profanely curse or swear in their hearing, forthwith to give information thereof to some Justice of the Peace of the county wherein the offence may be committed, in order that the offender may be taken, convicted, and punished for the same.‡

It is their duty to complain of those who keep implements of gaming, and suffer gaming to be carried on in their houses or yards.||

By his original power he may apprehend the offender in case of felony, and other aggravated offences, committed in his view, and that without warrant.§

In general, where an affray takes place in his presence, he may either keep the parties in custody till it is over, or he may carry them immediately before a magistrate. He has power to demand the assistance of others, when in the execution of his office for the preservation of the peace, or for the apprehending and securing any person

* Stat. 1786, ch. 38.

† Stat. 1791, ch. 58.

‡ Stat. 1798, ch. 32.

§ Stat. 1798, ch. 20.

|| See Davis's Justice, a work that should be in the hands of every Magistrate, that has any concern in administering the criminal law.

for the breach thereof, or for any other criminal cause.* And every person who neglects to obey an executive officer, when thereto required in the name of the Commonwealth of Massachusetts, shall forfeit not less than *three* nor more than *fifty dollars*, and if unable to pay, is liable to imprisonment.†

But in general, a Constable cannot, any more than any other individual, of his own accord and without warrant, justify the arrest of a supposed offender, upon suspicion of his guilt, unless he can shew that a felony has been committed, and the reasonableness of the suspicion that the party arrested is guilty.

If there be an affray, the Constable, either to prevent it, or, in the time of the affray, upon information or complaint, may arrest the offender; but if the affray be past, and there is no danger of death, the Constable cannot arrest the offender without a warrant from a Justice of the Peace.

When a felony has been committed, it is agreed that a Constable may arrest and imprison the felon, till he can be conveniently conveyed to a Justice of the Peace or to the common jail.

And it is also agreed that he may break open doors to take the felon, if he be in the house, and the Constable's entry is denied after demand and notice that he is a Constable—and the reason is, that he is, *ex officio*, a conservator of the peace, and is not only permitted, but by law enjoined, to take a felon; and if he omits his duty in this respect he is punishable for such neglect. But there must be a felony done, and the Constable must “be ascertained” of the fact.—See *Davis's Justice*, 58.

V. *Duties of Constables respecting the drawing and return of Jurors.*

1. Upon the receipt of a *venire*, the Constable shall notify the qualified inhabitants of the town, in the same manner as other town-meetings are notified, to be present at the draft of jurymen. Provided, however, if the town, at a legal town-meeting, has ordered that the notification shall be by the Constable's giving notice to the selectmen, or a major

* See *Davis's Justice*, 57.

† Stat. 1795, ch. 68.

part of them, and the town-clerk, or by any other mode, such notification shall be sufficient. The meeting must be held at least six days, and not more than twenty days, before the sitting of the Court to which the *venire* is returnable.

2. The persons designated to serve as jurors must be notified by the Constable, four days at least before the sitting of the Court, either by reading to them the *venire*, with the minutes of their having been drafted, thereon, or by leaving at their usual places of abode a written notification of their having been so drawn, and also of the time and place of the sitting of the Court, and when they are to attend.

3. The Constable is lastly to make a seasonable return of his *venire* to the Court, with his doings thereon. This is a duty that is oftentimes neglected, and much evil is generally the consequence. It is confidently believed, however, that no Constable will be guilty of a repetition of this offence.

4. Any Constable who shall neglect to perform the duties devolved upon him by this Act, shall be fined at the discretion of the Court, not exceeding *twenty dollars*.—*Stat. of 1807, ch. 140.*

5. His fees are, *twenty-five cents* for the service of the *venire*, and *four cents* a mile for his travel, from the place of summoning the juror to the place of the sitting of the Court.—*Stat. of 1795, ch. 41.*

VI. *The penalty for a Constable's undertaking to act as Counsel or Attorney.*

No Constable shall be suffered to appear in any Court, or before any Justice of the Peace as attorney to, or in behalf of, any party in a suit, nor shall any Constable draw, make, or fill up any plaint or declaration, writ or process. The penalty for this offence is *fifty dollars*, to be recovered by action of debt, to the use of any person who shall sue for the same.—*Stat. of 1822, ch. 20.*

ENGINE-MEN.

1. *How Engine-Men are appointed and removed.*

The selectmen of such towns as are provided with one or more fire-engines, are empowered, if they judge it expedient, to nominate and appoint a number of suitable persons for Engine-Men, not exceeding thirty-one for one engine, who shall continue in office, during the pleasure of the selectmen. Stat. 1785, ch. 42, and 1805, ch. 82. § 5. and March 1, 1834.

The selectmen of the several towns are also empowered, if they shall judge it expedient, to nominate and appoint, from time to time, any number not exceeding four men to each engine, in addition to the said number of thirty-one men : provided, however, that such addition be made with the consent of the commanding officers of the respective military companies, from which such additional number may be taken : and provided also, that no military company be thereby reduced under the number prescribed by law : and all Engine-Men appointed in pursuance of this Act, shall continue in office during the pleasure of the selectmen of the several towns, whereto they may belong, and shall enjoy all the privileges and exemptions to which other Engine-Men are or may hereafter be by law entitled.*

If any person being so appointed, shall, in the opinion of the said selectmen, be negligent and remiss in the duties required of him as an Engine-Man, by this Act, it shall be the duty of the selectmen in the same town, upon sufficient evidence thereof, to discharge him from said company, and proceed to appoint another Engine-Man in his room, in the manner before directed by this statute.

Whenever Engine-Men are appointed, either by the Selectmen or the Courts of Sessions, such men shall be appointed, (if such can be obtained,) as live at or near the place where said Engine is located : said Engine-Men so appointed shall enjoy all the privileges, and exemptions to which other Engine-Men are or may hereafter be by law entitled.

* Stat. 1785, ch. 42. and 1805, ch. 2. § 2.

II. *Of their appointment, when the Engine is private property.*

Whenever the proprietor or proprietors of any engine or engines, shall apply to the selectmen of any town in which the said engine or engines may be, setting forth that they have such engine or engines, which they are desirous should be employed for the benefit of the said town, the selectmen of such town, upon application as aforesaid, may appoint Engine-Men in the same manner, with the same privileges, and subject to the same regulations, as though the said engine or engines were the property of the said town.*

III. *Their duty and their exemptions.*

Engine-Men nominated and appointed, as is before provided, are authorized and empowered to meet together some time in the month of May, annually; at which meeting, they shall have authority to choose a master, or director, and clerk of the said engine; and establish such rules and regulations, respecting their duty as Engine-Men, as shall be approved by the selectmen, and to annex penalties to the same, which may be recovered by the clerk of said Engine-Men, before any Justice of the Peace in the same county: Provided, no penalty shall exceed *forty shillings*, and that such rules and regulations shall not be repugnant to the laws of this Commonwealth.†

The respective companies of Engine-Men, who may be nominated and appointed as aforesaid, shall be held and obliged to meet together once a month, and more often, if necessary, for the purpose of examining the state of the engine to which they belong, and the appendages belonging to the same, and seeing that the said engine is in good repair, and ready to proceed on any emergency, to the relief of any part of the community that may be invaded by the calamity of fire; and the said Engine-Men appointed as aforesaid, shall be held and obliged to go forward, either by night or by day, under the direction of the firewards in the same town, and to use their best endeav-

* Stat. of 1785, ch. 82. § 3.

† Ibid. § 2.

ours to extinguish any fire that may happen in the same town, or the vicinity thereof, and shall come to their knowledge, without delay.

Engine-Men are exempted from serving upon juries—in the office of constable*—and from military duty.

But to claim exemption from military duty, they must *annually*, produce to the commanding officer of the company within whose bounds they reside, certificates from the selectmen, that they have been legally appointed, and are bound to perform the duties of Engine-Men.†

And to claim exemption from serving as jurymen, it is necessary, that the town shall, at a legal meeting, by vote, declare the expediency of such exemption.‡ And perhaps this privilege is taken away by the general Act respecting jurors.§

IV. *Of the liability of persons for injuring Engines.*

If any person shall wantonly or maliciously spoil, break, injure, damage, or render useless, any engine, or any of the apparatus thereto belonging, prepared by any town, society, person or persons, for the extinguishment of fire, and shall be convicted thereof before the Supreme Judicial Court, he shall be punished by a fine not exceeding *five hundred dollars*, or by imprisonment not exceeding *two years*, at the discretion of the court; and be further ordered to recognize, with sufficient surety or sureties, for his good behaviour, for such term as the court shall order.

V. *Proceedings when Selectmen neglect to appoint Engine-men.*

Whenever the proprietor or proprietors of any Engine shall apply to the Selectmen of any town in which said Engine may be, for the appointment of a proper number of men, conveniently situated to manage and work said Engine, and the Selectmen shall refuse or delay for the space of twenty days to appoint such men; then and in that case, the said proprietor or proprietors may in writing

* Stat. 1785, ch. 82. § 4.

† Stat. 1808, ch. 25.

‡ Stat. 1809, ch. 108. § 1.

§ Stat. 1812, ch. 141. § 2.

[apply] to the Court of Sessions, holden in the county where said proprietor or proprietors reside ; said proprietor or proprietors giving due notice in writing to said Selectmen, five days at least before the sitting of said Court, that the aforesaid Selectmen may appear and shew cause, if any they have, why said Engine-Men should not be appointed ; and if sufficient cause should not be shown by said Selectmen, that such Engine-Men ought not to be appointed, the Court of Sessions are hereby authorized and empowered by the authority aforesaid to appoint such a number of Engine-men as the law respecting Engine-Men now directs.

VI. *Concerning the appointment of Engine-Men.*

The public Fire Engines in the several towns in this Commonwealth, shall be manned by the numbers, and in the manner hereinafter directed. To each common Fire Engine there shall be appointed a number not exceeding thirty men ; and each Hydraulion, or Suction Fire Engine, a number not exceeding forty-five men. And whenever such Suction Engines shall be suffered to go out of repair, and remain so, and be used as common Engines only, the said number of forty-five men shall be reduced to the number of thirty, herein prescribed for common Engines. *Provided, however,* That this Act shall not affect the right now existing in any city or town, to have a greater number of Engine Men appointed than is herein prescribed.

And the mode of appointment, duties, liabilities, privileges and exemptions of said additional Engine Men, shall be the same as those of Engine Men under existing laws.

All persons duly appointed Engine Men for any public Fire Engine, within the Commonwealth, and all persons duly appointed members of the Fire Department established in any city or town, and who shall have done duty as such for the space of one year prior to the first day of May, in each year, shall be entitled to receive from the Treasurers of their respective towns and cities, a sum equal to the poll tax to the state, county, and towns (ex-

clusive of highway taxes) which may have been paid by such persons, or by their parents, masters, or guardians.

And it shall be the duty of the Chief Engineer, or of the officer who holds, by law, the first office in any Fire Department, established as aforesaid—and of the Foreman, or commanding officer of any public Fire Engine, in any town where no Fire Department is established by law, on or before the first day of May, in each year, to make out and certify to the Assessors of each city or town, a list of all persons in that Department and Companies respectively, who, through the year preceding, have performed all the duties therein required by law.

And the Assessors shall, within ten days thereafter, examine said lists, and certify to the Treasurers of their respective cities or towns, the amount to be paid to each person named therein; and the said Treasurers shall, on request, pay the same to the persons so named, or if minors, to their parents, masters, or guardians. And upon refusal of any such city or town so to pay, the persons entitled, may severally have an action for money had and received, against such city or town, to recover the same.

If any Chief Engineer, or other officer required to make a certificate to the Assessors, as herein provided, shall wilfully refuse to make such certificate, or shall wilfully and fraudulently make a false certificate, he shall forfeit and pay a sum not less than twenty, nor more than fifty dollars, to be recovered in any court proper to try the same, to the use of the city or town in which the person in whose favor such certificate ought to have been, or shall be made, was assessed.

The Statute of eighteen hundred and twenty-six, chapter one hundred and ten, entitled "An Act to increase the number and provide for the appointment of Engine Men," is hereby repealed.

The second and third sections of this Act shall not take effect in any town or city in this Commonwealth, unless the same shall be adopted and approved annually, at the annual town meeting in each town, for the choice of town officers, or by the Mayor and Aldermen of the city of Boston, or by the City Council thereof, some time in the months of March or April.

March 1, 1834.

FENCE-VIEWERS.

I. *How to be chosen, qualified, and sworn.*

Every town* shall, at their annual town-meeting for the choice of officers, choose two or more *judicious and discreet freeholders*, to be Fence-Viewers, to be sworn as other town officers are, to the faithful discharge of the duties of their office; each of whom, in case of refusal after seven days' notice, shall pay a fine of *five dollars* to the use of the town. And another person shall forthwith be sworn in his stead.

II. *What is a sufficient and legal Fence, and how the same is to be rebuilt or repaired; and herein of the duty of Fence-Viewers, when a Fence becomes insufficient.†*

All fences of four feet high, and in good repair, consisting of rails, timber, boards, or stone-walls; and also brooks, rivers, ponds, creeks, ditches, and hedges, or other matter or thing equivalent thereto, in the judgment of the Fence-Viewers within whose jurisdiction the same shall lie, shall be accounted legal and sufficient fences and the respective occupants of lands inclosed with fence shall keep up and maintain partition fences between them and the next adjoining inclosures, in equal halves, so long as both parties continue to improve the same; and in case either party shall neglect or refuse to repair or rebuild the fence which of right he ought to maintain, the aggrieved party may forthwith apply to two or more Fence-Viewers of such town, duly chosen and sworn, to survey the same; and upon their determination that the fence is insufficient, they shall signify the same, in writing, to the occupant of the land, and direct him to repair or rebuild the same within six days; and if the same fence shall not be repaired or rebuilt within the said term of six days, it shall be lawful for the complainant that improves the lands adjoining, to make up, amend or repair the deficiency; and when the same shall be completed and ad-

* Stat. of 1785, ch. 52. § 1.

† Stat. 1785, ch. 52. § 2.

FENCE-VIEWERS.

judged sufficient by two or more of the Fence-Viewers and the value thereof, together with the Fence-Viewer fees ascertained in writing, the complainant shall have right to demand and receive of the occupant, lessor or freeholder of the land where the fence was deficient as aforesaid, at his election, double the sum thus ascertained as aforesaid, for the expense of amending, surveying and viewing the fence; and in case of neglect or refusal to make payment thereof, for the space of one calendar month after demand made of the person against whom he shall make his election, he may sue for and recover the same, by special action of the case in any court proper to try the same, and interest, *one per cent.* per month, until judgment shall be rendered therefor.

III. *Duty of Fence-Viewers in assigning to the respective occupants of lands their parts in partition Fences.**

When any dispute shall arise about the respective occupants' right in partition fences, and his or their obligation to maintain the same, upon application made by either party to two or more Fence-Viewers of such town where the lands lie, they are hereby empowered, after due notice to each party, to attend at the time and place, if they see cause, to assign to each party his share thereof, in writing: which assignment being recorded in the town clerk's office, shall be binding upon such persons, and the succeeding occupiers of the respective lands, and they obliged always thereafter to maintain their part of said fence; and in case any of the parties shall refuse, or neglect to erect, keep up and maintain the part to such party assigned, the same may be done by the aggrieved party, in the manner before in this Act provided, and for which he shall be entitled to double the sum ascertained, in manner as aforesaid, and to be recovered in like manner. And all divisional fences between man and man shall be kept in good repair throughout the year, unless the occupiers of the lands on both sides shall otherwise agree.

* Stat. 1785, ch. 52. § 3.

IV. *Duty of Fence-Viewers, when the boundary line is a Brook, Pond, or Creek, or when a Water Fence is necessary.*

When lands belonging to, or occupied by different persons, and subjected to be fenced, are bounded upon, or divided from each other by any brook, pond or creek, which of itself is not a sufficient fence in the judgment of the Fence-Viewers, and it is in their opinion impracticable, without unreasonable expense, for the partition fence to be made in the middle or other part thereof, being the true boundary line between them; if, in such case, the occupant of the land on one side shall refuse or neglect to join with the occupant of the land on the other side in making a partition fence on one side or the other, or shall disagree respecting the same, then two or more Fence-Viewers of the town or towns wherein such lands lie, on application to them made, shall forthwith view such brook, river, pond, or creek; and if they shall determine the same not to answer the purpose of a sufficient fence, and that it is impracticable to fence at the true boundary line; they shall judge and determine how or on which side thereof the fence shall be set up and maintained, or whether partly on one side and partly on the other side, as to them shall appear just, and reduce such their determination to writing, having first given notice to the parties to be present at such assignment; and if either of the parties shall refuse or neglect to make up and maintain the part of the fence to such party belonging, according to the Fence-Viewers' determination in writing, as aforesaid, the same may be done and performed, as is before provided, and the delinquent party subject to the same costs and charges, and to be recovered in like manner.

When a water fence, or fence running into the water is necessary to be made, the same shall be done in equal halves, unless by the parties otherwise agreed: and in case either party shall refuse or neglect to make or maintain the share to such party belonging, similar proceedings shall be had, as in other cases of the like kind respecting fences, in this Act mentioned.

V. *Duty of Fence-Viewers when one occupant of land, against the will of the other, is desirous of a Fence, that he may improve his part in severalty.*

Where any lands belonging to two persons in severalty shall have been improved in common without a partition fence between them, and one of the occupants shall be desirous to improve his part in severalty, and the other occupant shall refuse or neglect, on demand, to divide the line where the fence ought to be built, or to build a sufficient fence on his part of the line when divided, it shall be in the power of the party desiring it, to have the same divided and assigned by two or more of the Fence-Viewers of the same town, in the way and manner in this Act provided; and the same Fence-Viewers may, in writing, assign a reasonable time, having regard to the season of the year, for making up the fence; and if the occupant complained of shall not build and erect his part of the fence within the time so assigned, it shall and may be lawful for the other party, after having made up his own part of the fence, to make up the other's part, and recover therefor double the sum it shall cost, with the fees of the Fence-Viewers, in the way and manner before provided.

VI. *Duties of Fence-Viewers when one joint occupant ceases to improve the lands fenced; and herein of the rights of the parties.*

When one party shall cease to improve his land, or shall lay his enclosure, before under improvement, in common, he shall not have a right to take away any part of the partition fence that to him belongs, adjoining to the next inclosure that is improved: Provided the party continuing to improve will allow and pay therefor, so much as two or more Fence-Viewers shall, in writing, determine the reasonable value thereof. And whenever any lands which have laid unimproved and in common, shall be afterwards inclosed or improved by depasturing, the occupant, lessor, or freeholder thereof shall pay for the one half of each partition fence standing upon the divisional line between the same land and the land of the

inclosures of any other occupant or proprietor, the value and part thereof to be ascertained, in writing, in case they shall not agree between themselves, by two or more of the Fence-Viewers of the same town wherein such line lies; and in case such occupant, lessor, or proprietor as aforesaid, shall neglect or refuse to pay for a moiety of the partition fences, for the space of thirty days after demand made (the value having been ascertained as aforesaid) the proprietor of the fence may have and maintain in form aforesaid, an action of the case for such value, and the costs of ascertaining the same.

The proviso in the 7th sec. provides that the Act shall not extend to house-lots of less than half an acre, but if an owner of such lot shall improve, his neighbour shall make one half of the fence, whether he improve or not.

If a part of a division fence be assigned to a party to keep in repair, it is his property, so far at least that the removal of it for lawful purposes, cannot make him a trespasser, nor can the respective occupants of the land be considered as joint owners of the materials of which the fence is composed.—*Burrell vs. Burrell*.—*Mass. Rep.* xi. 294.

VII. *How far subsequent owners of the land are bound to maintain the Fences.*

By the 3d section of the stat. of 1785, it will be seen that if the assignment of the Fence-Viewers was recorded with the town-clerk, the succeeding occupiers of the lands were obliged always thereafter to maintain the fence. But no provision was made for any agreement of the parties without the intervention of Fence-Viewers.

But by a recent statute,* it is provided that in all cases where a division fence between the owners of improved lands has been made, either by Fence-Viewers or by agreement, in writing, between the parties, and recorded in the office of the clerk of the town wherein such lands are situate, and in all cases where a division of fence between the owners of improved lands shall hereafter be made, either by Fence-Viewers or by agreement, in writing, between the parties, and recorded as aforesaid, the

* Stat. 1822, ch. 60.

Owners of all such lands and their several heirs signs forever, shall be holden to erect and support fences agreeable to such division: Provided any person shall lay his lands common, and not have any part of the same adjoining the fence that have been divided as aforesaid, by giving six months of his intention to all the adjoining occupants of he shall not be holden to keep up or support said during the time his lands shall thus lay common improved.*

Duty of Fence-Viewers, respecting Fences around General and Common Fields.

A general Act of 1785, respecting the fences around fields imposes no duty upon Fence-Viewers, but remedies are therein provided, which, proving inadequate, the stat. of 1795, was passed, that provides whenever the fence around any General and Common belonging to any freeholder, occupant or improver of land in such field, shall become deficient and needing, the owner thereof shall immediately repair such defective fence, after being duly notified of such deficiency, by the Fence-Viewer of the town wherein such field lieth; and in case the owner thereof shall neglect to repair such defective fence, for the space of three days, after due notice thereof by any Fence-Viewer, as aforesaid, it shall be lawful for any freeholder or occupier of lands in such fields, to repair such defective fence; when the same shall be completed and adjudged sufficient by two or more of the Fence-Viewers of the town wherein such fence lieth, and the value thereof, together with the Fence-Viewers' fees, ascertained in writing, by the subscribers, the person who shall make up or repair the defective fence shall have right to demand and receive of the occupier, lessor, or freeholder of the land, the sum sufficient to make up and repair the same at his election, and the expense of making or repairing, surveying

It will be observed that this statute is *retrospective* in its provisions; and may hereafter be an interesting question, how far it is competent to the Legislature to create incumbrances upon real estates, without the consent of the owners.

and viewing such fence ; and in case of neglect or refusal to make payment thereof for the space of one month after notice and demand made of the person against whom he shall make his election, to satisfy him therefor, he may sue for and recover the same by a special action of the case, with costs of suit, in any court proper to try the same.

Whenever any fence shall be suddenly blown down, carried away, or destroyed, and the crops of grain or grass therein growing shall be thereby exposed to be immediately destroyed, the occupant or freeholder of the same, to whom the same fence belonged to repair, shall immediately repair the same ; and in case of neglect for the space of twenty-four hours after notice given him thereof by any Fence-Viewer as aforesaid, it shall and may be lawful for any freeholder or occupier of any lands in such fields, to set up and sufficiently repair such fence ; and when the same shall be completed and adjudged sufficient by two Fence-Viewers, or more, as aforesaid, and the value thereof, together with the Fence-Viewers' fees, ascertained in writing, as aforesaid, the person who shall set up or repair the same shall have right to demand and receive of the occupier, lessor or freeholder of the land, who ought to make up and repair such fence, at his election, double the sum thus ascertained, as aforesaid, for the expense of setting up, repairing, surveying and viewing the same ; and in case of neglect or refusal to make payment thereof for the space of one month, as aforesaid, after demand made of the person against whom he shall make his election, to receive the same, he may sue for and recover the same, with costs of suit, in manner as is before directed.

IX. *Of the liabilities of owners of land who have not obtained a division of their partition Fences.*

If the cattle of one tenant escape into the adjoining close of another tenant, through a defect of the fence, the owner of the cattle may shew that the party complaining is bound by prescription to maintain the fence ; when he should regularly plead the prescription, and may prove it by ancient usage.—*Rust vs. Low & al.—Mass. Rep. vi. 90.*

But every person may distrain cattle doing damage on his close, or maintain trespass against the owner of the cattle, unless the owner can protect himself by the provisions of the statute, or by a written agreement to which the parties to the suit are parties or privies, or by prescription.—*Ibid.*

An agreement between tenants, making a division of the fence, each one mutually undertaking to repair his part, will not authorize one tenant, who had made or repaired the fence of the other, on his refusal, to recover of him double the expense, as in the case of an assignment by Fence-Viewers pursuant to the statute; but his remedy is on the agreement.—*Ibid.*

The object of the statute was to establish the rights and obligations of tenants of adjoining occupied closes, respecting the making and maintaining of partition fences; but the rights of the owners of adjoining lands which are not both occupied by the respective owners, and lands enclosed in a general field or common pasture, and closes adjoining to a high-way, and the rights of persons, not having any interest in either of the adjoining closes, remain unaffected by the statute, and are to be defined and protected by the common law.—*Ibid.*

The respective occupiers of two closes adjoining are bound, each one to make and maintain half the partition fence; but unless the fence, or the line on which it is made, has been divided by a written agreement between the parties, or assigned pursuant to the statute, or by prescription, neither party is obliged to make or maintain any part of the partition fence.—*Ibid.*

If a partition fence have been divided by Fence-Viewers, who have assigned to each tenant his part pursuant to the statute, it is sufficient for either tenant, in pleading, to allege that the other is obliged by law to make and repair, and give the assignment in evidence.—*Ibid.*

The owner of a close is not obliged to fence but against the escape of cattle lawfully in the adjoining ground; and if all his fence be sufficient, yet if the cattle do not escape into his close through the insufficient fence, but are turned in, or escape through a deficient fence of an intermediate close not belonging to him, he may lawfully dis-

train them damage-feasant.—*Melody vs. Reab*, iv. 471, *Rust vs. Low & al.* vi. 90.

The laws respecting fences, do not interfere with contracts or rights existing independently of the Statute.—2 *Dane's Ab.* 660.

A man may be bound by prescription to maintain a fence for the benefit of another as well as himself; and an action on the case will lie against him, if damage ensues in case it be out of repair.—5 *Pick.* 505.

So he shall not have any action for damage done to his lands, if he himself ought to keep the fence in repair.—*Ibid.*

But if a man who is thus bound prescriptively to maintain a fence, builds it, and brings his action under the statute, he will fail, because the obligation was created with his title to the land.—*Ibid.*

Parol proof of usage in the maintenance of a fence, is admissible evidence to shew a prescription.—2 *Greenleaf*, 72.

X. *When the line in dispute is on, or crossing a Town Line.*

In all cases where the line upon which partition fence is to be made or divided is the boundary line of one or more towns, or partly in one town and partly in another town, a Fence-Viewer shall be taken from each town.

XI. *Penalty if Fence-Viewers neglect their Duty—and their Fees.*

Any Fence-Viewer duly chosen and sworn, who, on due notice given him and being requested by any person interested to view any fence complained of as insufficient, shall neglect forthwith to attend the same, shall forfeit and pay the sum of *twenty shillings*, to him or them who shall sue for the same, within forty days after such neglect; and each Fence-Viewer shall be paid *five shillings* a day, *two shillings and eight pence* for half a day, and under that, *one shilling and six pence*, for the time he shall be engaged in the business of his office, by the person employing him. And in case the complainant shall neglect to pay the Fence-Viewers their legal fees within thir-

ty days after the service done, they may severally recover by an action of the case, double the amount of such fees; and each Fence-Viewer may be a witness for or against his companion in such suit.

FIELD-DRIVERS.

[See APPENDIX.]

Sec. 1. If the owner of any Ram shall suffer the same to go at large out of his or her enclosure, between the first day of July and the twenty-fifth day of December, in any year, such owner shall forfeit and pay the sum of *five dollars* to the person who shall first sue for the same, in an action of debt before any Justice of the Peace in the county where such owner lives; provided such action be brought within thirty days next after such Ram shall be found going at large as aforesaid.

Sec. 2. If any Ram, within the times aforesaid, shall be found going at large out of the owner's enclosure, and the owner thereof is not known, it shall be lawful for any person to take up and keep the same in some suitable place, and within twenty-four hours next after taking up such Ram, shall lodge a notification in writing, by him signed, with the Town Clerk of the same town, setting forth the colour and marks, natural and artificial, if such there be, and also to post up in some public place in the same town, within the said twenty-four hours, a similar notification; and in case the owner of such Ram shall appear within seven days next after notice given as aforesaid, and shall pay or tender the sum of *five dollars* to the person taking up such Ram, the same shall be restored to the owner; but if the owner do not appear and pay the said sum of *five dollars*, within the said seven days, such Ram shall be forfeited to the person taking up the same as aforesaid; and nothing in this Act shall be construed to bar any person from an action for damage done by any Ram going at large as aforesaid. Stat. 1824. ch. 98.

FIRES AND FIRE-WARDS.

I. *Of the choice of Fire-Wards ; and the penalty for th refusal to serve.**

Each town in this Commonwealth, in their March April meeting annually, wherein the qualified voters sh think it expedient to choose Fire-Wards, shall have pov to elect such number of suitable persons to be Fire-Wa therein, as shall be deemed necessary ; and each pers so elected, shall be notified thereof within three days, a shall, within three days after being so notified, enter acceptance or refusal of the said office with the tow clerk.

And if any person being so elected and notified, sh neglect to enter his acceptance or refusal as aforesaid, shall forfeit and pay *ten dollars*, unless excused by town ; and the town shall have power to elect another his place, in case of such neglect or refusal.

And when any fire shall break out in any town, whe in Firewards shall be appointed, they shall immediat attend thereat, and carry with them a suitable staff, badge of their office.

II. *Of damages, when Buildings are prostrated, to prev an increase of Fire.*

If the pulling down or demolishing of any house or bui ing by the directions herein after mentioned, shall be means of stopping the said fire, or if the fire stop befor come to the same, then every owner of such house or bui ing shall receive a reasonable compensation, and be p for the same, by the inhabitants of the town in which fire shall happen ; and it shall be the duty of the qualif voters in such town, to grant such sum or sums of mon as shall be thought necessary and proper by the selectm of the same town, and of the assessors to assess the sar *Provided always*, that when it shall be adjudged fit t

* Stat. 1786, ch. 83.

the house or building where the fire shall first begin and break out should be pulled down or demolished, to prevent the further spreading and increase of the same fire, then the owner of such house or building shall receive no compensation for the same. *Provided also*, that if any person shall find him or herself aggrieved by the doings of the town, selectmen or assessors thereof, in estimating, voting or assessing such sum or sums, he or she shall have a right to appeal and complain to the next Court of Sessions to be holden in the county; and the said court thereon shall have power, on a consideration of all the circumstances of the case, to confirm said doings of said town, selectmen or assessors, or to alter the same in such manner as the said court shall judge proper; and in either case, to award legal costs as the justice of the case may require; and the collectors to whom the said assessments shall be committed to collect, shall have the same power and be subject to the same duties as in the collection of other town taxes, as well in collecting an assessment so confirmed or altered, as in cases wherein there shall be no appeal.

III. *The power of Fire-Wards, and the penalty for disobedience of their orders.*

When any fire shall break out, in any town, the Fire-Wards thereof, who shall be present in the place of immediate danger, or any three of them, and where no Fire-Wards shall be appointed, a major part of the selectmen present, or, in their absence, two or three of the civil officers present, or, in their absence, two or three of the chief military officers of said town present, shall have power to direct the pulling down or demolishing any such house or building as they shall judge necessary to be pulled down, or demolished, in order to prevent the further spreading of the fire.

And, during the continuance of any fire, the said Fire-Wards, or officers, as the case may be, shall have power to require assistance for extinguishing the same, and for removing any furniture, goods, or merchandize, from any building on fire, or in danger thereof; and to appoint guards to secure the same; and also assistance for pulling

down or demolishing any house or building, as the case may require; and further, to suppress all tumults and disorders.

And the said Fire-Wards, selectmen, or officers, as the case may be, shall have authority to direct and appoint the stations and operations of the engine-men, with their engines, and of all other persons, for the purpose of extinguishing the fire, and preventing its increase.

And if any person shall refuse, or neglect, to obey any order given by said Fire-Wards, or officers, in the premises, the person so offending shall forfeit and pay, for each offence, *ten dollars*.

IV. Liability of those who plunder property at Fires.

If any person shall in such case of fire, plunder, purloin, embezzle, convey away, or conceal, any furniture goods or chattels, rights or credits, merchandize or effects of the inhabitants, whose houses or buildings shall be on fire, or endangered thereby, and said inhabitants shall be put upon removing the same, and shall not restore, or give notice thereof to the owner, (if known) or to one of the Fire-Wards of the town, or bring them into such public place as shall be assigned by the selectmen of the town, within two days after public notice shall be posted in some public place in the town, by the selectmen thereof, for that purpose, the person or persons so offending, and being thereof convicted, shall be deemed guilty of *larceny*, and punished accordingly.

V. Liability of those who voluntarily and unnecessarily set fire to woods.

If any person or persons shall, wittingly or willingly set fire to any woods or lands lying in common, or to woodland, or other land held in severalty, and not his own, within this Commonwealth, without leave first had and obtained from the owners of the land, or those who have a right to give the same leave; excepting in cases in which it may become necessary to make back-fires to stop the progress, or subdue any fire that may be spreading; the person so offending, shall forfeit and pay, for each offence, *ten dollars*, one moiety thereof to the use

of the Commonwealth, and the other moiety thereof to the use of him or them that shall inform for the same; and shall be liable in a special action on the case, to pay damages to all persons injured by such fires, including the injury that may be done by any necessary back-fire made for the purpose aforesaid.

And in case any person under age shall offend, such penalty shall be recovered of the parent or master respectively of such person under age, unless it shall appear, that such person under age was employed or directed by some person other than the parent or master; in which case, the person so employing or directing shall be liable therefor.

And the fines in this section mentioned, may be recovered in an action of debt, with costs of suit.

VI. *Liability of those who make Bonfires.*

If any person or persons shall set fire, to any pile, or combustible stuff, or be any ways concerned in causing or making a bonfire, in any street or lane, or any other part of any town within this Commonwealth, such bonfire being within ten rods of any house or building, every person so offending, shall, for each offence, forfeit and pay the sum of *eight dollars*, or be imprisoned not exceeding *one month*. Said fine to be recovered, with costs of prosecution, one moiety of said fine to the use of the poor of the town or district wherein the offence shall be committed, and the other moiety to him or them who shall sue for the same.

And all masters are made liable to pay the fine aforesaid, for the offences of their servants; and all parents for the offences of their children, under age, and not being servants.

VII. *Penalty for such as are concerned in other Fire-Works, without license of the Selectmen.*

If any person shall offer for sale, set fire to, or throw any lighted cracker, squib, rocket, or serpent, within this Commonwealth, without the license of the selectmen of the several towns respectively, first obtained therefor, he shall forfeit, for every such offence, the sum of *five dol-*

lars ; one moiety to the use of the poor of the town, in which the offence shall be committed, and the other moiety to the use of the prosecutor ; to be recovered by action of debt, or by information before any Justice of the Peace of the county in which the offence shall be committed, with the costs of suits.

HEALTH COMMITTEE.

The proper officers to attend to the Health of the Inhabitants *in general*, are the *Selectmen* ; and the laws upon this subject will be found under that title. In Boston, Salem, Marblehead, Plymouth,* Charlestown, and Lynn, however, by sundry laws establishing Boards of Health in those places, the duties of the Selectmen and of the Health Committee are transferred to the Boards of Health, respectively.

In other towns, the power of these officers appears to be limited to two cases only.

I. *Of their choice, powers, and duties, in the removal of Filth.*†

Each town in this Commonwealth, may, at their meeting held in March or April, annually, or at any other meeting legally warned for the purpose, when they shall judge it to be necessary, choose and appoint a Health Committee, to consist of not less than five, nor more than nine suitable persons, or one person to be a Health Officer whose duty it shall be to remove all filth of any kind whatever, which shall be found in any of the streets, lanes, wharves, docks, or in any other place whatever, within the limits of the town to which such Committee or Health Officer belongs, whenever such filth shall in their judgment endanger the lives or the health of the inhabitants thereof ; all the expenses whereof so to be paid by

* See stat. of 1809, ch. 63, empowering the town of Plymouth to choose a Board of Health, &c. as delegating the powers of a Board of Health with more precision than either of the other statutes.

† Stat. 1797, ch. 16. § 11.

the person or persons who placed it there if known, or if not, by the town by which said Committee or Health Officer was appointed. And whenever any filth as aforesaid shall be found on private property, said Committee or Health Officer shall notify and order the owner or occupier thereof, after twenty-four hours to remove the same, at their own expense; and in case said owner or occupier shall neglect to remove such filth from his or her property, after the expiration of the time aforesaid, he or they so offending shall forfeit and pay a fine of *one hundred dollars*, to be sued for and recovered with costs of suit by said Committee or Health Officer, before any Court proper to try the same, for the use of the poor of the town in which such offence is committed. And said owner or occupier as aforesaid shall be liable and obliged to repay to said town all costs and charges which the said Committee or Health Officer may have incurred in removing the filth from his or her property, and in case of refusal to pay the same, he or they may be sued in the same way as is provided in this Act for the recovery of fines as aforesaid.

II. *Their powers, as to requiring persons or vessels to perform quarantine.*

In every seaport town where a Health Officer or Health Committee is chosen by the town, and the selectmen shall judge it necessary, and shall certify it under their hands or a major part of them, such officers are authorized to perform all the duties of selectmen in requiring any person or persons, vessel or vessels, to perform quarantine, in manner pointed out by law.

HOG-REEVES.

[See APPENDIX.]

IMPOUNDING.

[See APPENDIX.]

MEASURERS OF WOOD AND BARK.

I. *Their Appointment.*

In each town where the inhabitants shall, in town-meeting legally assembled, vote the same to be necessary, and wherein Fire-Wood or Bark is usually sold, the selectmen shall annually, or as occasion may require, appoint one or more suitable persons, and conveniently situated in the town, to be Measurers of Wood and Bark there exposed or brought in for sale, and shall give public notice thereof; which Measurer or Measurers shall be sworn to the faithful and diligent discharge of their office.*

These officers may also be chosen by the inhabitants of the town at their annual town-meeting, in the same manner as other town-officers.†

II. *Of the duty of persons, offering Wood or Bark for sale, to have the same measured by a Measurer; and the penalty for neglect.*

If any Fire-Wood or Bark brought by land into any town for sale, wherein such Measurers shall be appointed, shall be offered for sale before the same shall be measured by such Measurer, and a ticket signed by him and delivered to the driver, certifying the quantity of wood the load contains, the name of the driver, and the town in which he resides, such Wood or Bark shall be forfeited, two-thirds to the use of the poor of the town where offered for sale, and the other third part thereof to the Measurer, or any other person who shall prosecute for the same. And if any wharfinger or carter shall cart or carry any Fire-Wood from any wharf or landing place in any town, (except for the use and consumption of such wharfinger or carter) before the same shall have been measured by some Measurer appointed as aforesaid, he shall forfeit and pay *one dollar* for every load of wood so carried off; one moiety thereof to the use of the poor of the town where the offence shall be committed, and the other moiety to any person who shall prosecute for the same.‡

* Stat. 1796, ch. 67.

† Stat. 1785, ch. 75.

‡ Stat. 1796, ch. 67.

And by an additional Act* it is provided that all cord-wood, brought in by water into any town for sale, shall be measured by a Measurer duly appointed and sworn; and in order thereto the wood so brought in, shall be corded and piled by itself, upon the wharf or land whereon the same shall be landed, in ranges, making up in height what shall be wanting in length; at which time it shall be so measured, and a ticket given to the purchaser, who shall be obliged to pay the stated fees or allowance for such service, as appointed by the selectmen.

And every wharfinger, carter or driver, that shall cart or carry any fire-wood from any wharf or landing-place in any town, shall be furnished, by the owner or seller of such wood, with a ticket, certifying the quantity the load contains, and the name of the driver. And if any fire-wood shall be carted or carried as aforesaid, without such ticket accompanying the same; or if any driver shall refuse to produce and shew such ticket, on demand, to any Measurer duly sworn as aforesaid, or his consent to have the same measured; or if such ticket shall certify a greater quantity of wood than the load contains, in the opinion of the Measurer aforesaid, after measuring the same, such wood shall be forfeited and seized, two thirds to the use of the poor of the town where offered for sale, and the other one third to the Measurer or whoever shall prosecute for the same: *Provided nevertheless*, That nothing herein contained shall be construed to extend to any person or persons who shall transport or cart, or cause to be transported or carted, from any wharf or landing-place, to his or their own dwelling-houses or stores, any cord-wood which he or they shall have purchased on such wharf or landing-place, or shall have landed thereon upon his or their own account.

III. *How Wood is to be corded.*

All cord-wood exposed to sale, shall be four feet, three feet, or two feet long, including half of the carf; and the cord, being well and close laid together, shall measure eight feet in length, four feet in width, and four feet in height.†

* Stat. 1799, ch. 26.

† Stat. 1827, ch. 19

IV. *The Fees of Measurers.*

Their fees are to be fixed by the selectmen, and are to be paid by the driver of the Wood or Bark, and repaid by the buyer where brought in by land, and by the wharfinger where brought in by water.

☞ Connected with this subject is the provision of law relating to the measuring of *Charcoal*. The same statute which provides for the measuring of Wood and Bark, enacts that all baskets used in measuring Charcoal, brought into any town, for sale, shall contain two bushels, and be of the following dimensions, to wit: Nineteen inches in breadth, in every part thereof, and seventeen inches and a half deep, measuring from the top of the basket to the highest part of the bottom; and that the basket be well heaped, and also be sealed by the sealer of the town where the person so using the same shall usually inhabit or reside; and every person who shall measure the Charcoal offered for sale in any basket of less dimensions, or not sealed as aforesaid, shall forfeit and pay, for each offence, *fifty cents*; one moiety thereof to the use of the poor of the town where the offence shall be committed, and the other moiety to any person who shall prosecute for the same; and such basket shall be destroyed.

And the selectmen of any town where Coal is usually sold, shall have the power to appoint, as occasion may require, some suitable person to seize and secure all baskets improved for measuring Coal, that shall not be of the dimensions aforesaid, and sealed as aforesaid; and to prosecute such person or persons as shall be guilty of a breach of the foregoing provision.

MILITIA.

By various provisions of the several Acts, relating to the Militia, obligations and duties are imposed upon towns and town officers, which render it proper to give a connected view of those provisions under this title.

I. *Of the duty of Towns to be provided with Ammunition, &c. and the penalties for neglect.*

Every town shall provide and deposit and constantly keep provided and deposited in some suitable and convenient place within said town, one hundred pounds of musket-balls each of the eighteenth part of a pound, one hundred twenty eight flints, suitable for muskets, and three copper, iron, or tin camp-kettles, for every sixty-four soldiers enrolled within said town; and the same proportion of the aforesaid articles for a greater or less number of soldiers enrolled as aforesaid. And every town which shall neglect to keep itself constantly provided with the articles aforesaid, and in the proportions aforesaid, shall forfeit and pay to the use of the Commonwealth a sum not exceeding *five hundred dollars*, nor less than *twenty dollars*, according to the nature and degree of the neglect; to be recovered by indictment or information in any court of competent jurisdiction.*

Whenever, in the opinion of the Commander in Chief, the exigencies of the Commonwealth shall require, it shall be his duty to issue his proclamation, calling upon the several towns to provide and deposit in some convenient place within said towns, sixty-four pounds of good gun-powder, for every sixty-four soldiers enrolled within said town, and the same proportion for a greater or less number of soldiers, enrolled as aforesaid, until the Commander in Chief shall, by proclamation, declare it unnecessary that the said towns should be any longer provided with powder as aforesaid; and every town which shall neglect, upon the proclamation of the Governor as aforesaid, to provide and keep itself provided with gun-powder as aforesaid, shall forfeit and pay to the use of the Commonwealth, a sum not exceeding *three hundred dollars*, nor less than *twenty dollars*, according to the nature and degree of the neglect; to be recovered by indictment or information in any court of competent jurisdiction.†

* Stat. 1809, ch. 108. § 22.

† Stat. 1821, ch. 92. § 7.

II. *Of the duties of Selectmen ; and the penalties for their neglect.*

1. As to providing equipments for privates who are unable to furnish themselves.

If any private shall be unable to provide himself with the arms and equipments required by law, and shall, between the first day of April and first day of May, produce to the commanding officer of the company to which he belongs, a certificate of such inability, from the overseers of the poor of the town where he resides, such commanding officer shall forthwith lay such certificate before the selectmen of the same town. And it shall be the duty of such Selectmen, forthwith, at the expense of their respective towns to provide, for every such private, the arms and equipments required as aforesaid ; and they shall deposit the same in some safe and convenient place, and shall permit the commanding officer of the company, to which such private, unable to provide himself as aforesaid, belongs, to deliver such arms and equipments to such private, whenever his company shall be ordered out for any military duty. And the said commanding officer shall be responsible for the safe return of such arms and equipments to the place of deposit.*

The penalty for each Selectman who neglects the duty thus imposed, is a fine not exceeding *fifty dollars*, to be recovered by indictment.†

2. Their duty when men are detached and ordered to march for the service of the State.

Whenever, in case of threatened or actual invasion, insurrection, or other public danger or emergency, the Militia shall be ordered out, or any part thereof shall be ordered to be detached or drafted by the Commander in Chief, the Selectmen of every town, to which the men detached as aforesaid, and ordered to march for the service of this State, belong, shall provide and cause carriages to attend them with further supplies‡ of provisions,

* Stat. 1809, ch. 108. § 9.

† Stat. 1812, ch. 126.

‡ The men are required to furnish themselves with three days' provisions.

and also the necessary camp equipage and camp utensils, until notice shall be given them by the commanding officer of the detachment to desist; and the Selectmen shall present their accounts for supplies to the General Court or allowance. And whenever the Selectmen of any town from which a detachment or part thereof as aforesaid shall march, being notified by the commanding officer of such detachment or part thereof, belonging to such town, shall neglect or refuse to furnish the necessary supplies, camp equipage, and camp utensils, the town to which the Selectmen, neglecting or refusing as aforesaid, belong, shall forfeit not less than *two hundred* nor more than *five hundred dollars*, to be sued for and recovered by any person who may prosecute for the same, in an action on the case, in any court of competent jurisdiction; one moiety to the prosecutor, and the other to be use of the Commonwealth. And the officer to whom or by whose order any camp equipage or camp utensils shall be delivered, shall be accountable for the same, unless injured or lost by some accident not in his power to prevent.*

3. Their duty as to the Military Stores of the town.

It is the duty of the Selectmen, in every town, annually, in the month of August, to make out a schedule of all the articles of military stores with which their respective towns are supplied, and deliver the same to the colonel or commanding officer of the regiment within which such town is situated. Stat. 1821. ch. 92. § 8.

By the Stat. of 1834, Sec. 4. it is required, that the same duties shall be required of the several volunteer companies of Militia, as are now by law required of them. And there shall be paid from the Treasury of the city or town to which the members of such companies may respectively belong, the sum of three dollars annually to each member thereof; *provided*, he shall keep himself constantly armed, uniformed, and equipped, and shall perform all the active duty required by law. And it shall be the duty of the commanding officers of said companies, on or before the first day of November, in each year, to make

* Stat. 1809, ch. 108. § 24.

out and certify to the Mayor and Aldermen of the city Boston, or to the Selectmen of the several towns a list of all persons in their respective companies, residing within the said city or towns respectively, who have entitled themselves, during the preceding year, to the pay provided in this act. And the said Mayor and Aldermen, or Selectmen, shall, within ten days thereafter, examine said lists, and order the Treasurer of their city or town to pay to each person the sum to which he is entitled by the provisions of this act; and upon the refusal of any Treasurer to pay the same, the persons entitled thereunto shall severally have an action of the case in assumpsit against the city or town whose Treasurer shall refuse to pay the same on demand, for the recovery thereof. And if any commanding officer shall wilfully refuse to certify as aforesaid, or shall intentionally make a false certificate, or if the Mayor and Aldermen of the city of Boston, or the Selectmen of any town, shall refuse to perform the duty as is herein provided, he or they so offending, shall forfeit and pay a sum not less than twenty, nor more than one hundred dollars, to be recovered by indictment in any Court of competent jurisdiction, to the use of the person or persons injured by such neglect or misconduct. And the amount of money paid according to the provision of this act, from the Treasury of any town or city shall be reimbursed to such town or city from the Treasury of this Commonwealth, upon an order drawn by the Treasurer of the town or city, in form, substantially, as follows, viz :

To the Treasurer of the Commonwealth of Massachusetts
 Pay to _____ the sum of _____
 being the amount of money paid out of the Treasury of the town (or city, as the case may be) of _____ by order of the Selectmen, (or Mayor and Aldermen) of said town (or city) to (here insert the number of persons paid) individuals, for Militia services performed by them during the past year.

A. B., Treasurer of _____

And to the truth of the facts stated in said order, the Treasurer shall make oath, before some Justice of the Peace, who shall certify the same upon said order.

All fines which shall hereafter be collected of the persons enrolled in the standing companies of Infantry, shall enure, one half to the use of the Clerks thereof, respectively, and the remainder to the use of the officer having command of such company at the time when such forfeitures were incurred.

In lieu of the sums hertofore paid to the several Staff Officers hereinafter mentioned there shall be annually paid to them, out of the Treasury of this Commonwealth, for the services required of them, the sums following, viz. : to each Brigade Major and Inspector, twenty-five dollars; to the senior Aid-de-Camp of each Major General, twelve dollars; to the Adjutant of each regiment or separate battalion, twelve dollars.

MODERATOR.

I. When and how chosen.

At every town-meeting (excepting for the choice of Governor, Lieutenant-Governor, Senators, and Representatives) a Moderator is to be first chosen, by a majority of votes, the town-clerk presiding until the choice be made.

Moderators of meetings, held for the choice of town officers, must be chosen by ballot. Stat. 1811. chap. 9. § 2.

By stat. 1831, ch. 50. the selectmen, in the absence of the town-clerk, shall preside in the choice of a moderator.

II. The powers and duties of Moderators.

The Moderator of a town meeting is empowered to manage and regulate the business of the meeting; and when a vote declared by the Moderator, shall, immediately after such declaration, be scrupled or questioned by seven or more of the voters present, the Moderator shall make the vote certain, by polling the voters, or such other way as the meeting shall desire. And no person shall speak in the meeting before leave first had and obtained

from the Moderator, nor when any other person is orderly speaking; and all persons shall be silent at the desire of the Moderator, on pain of forfeiting *five shillings* for the breach of every such order, to the use of the town: And if any person shall, after notice from the Moderator, persist in his disorderly behaviour, then it shall be lawful for the Moderator to direct such disorderly person to withdraw from the meeting; and such disorderly person, upon his refusal or neglect to withdraw, shall pay a fine of *twenty shillings*, to the use of the same town; and may also, by direction of the Moderator, be carried out of the meeting by some constable of said town, and put into the stocks, cage, or some other place of confinement, and there be detained, for the space of three hours, unless the town-meeting shall sooner adjourn or dissolve.*

The Moderator may administer the oath to the town-clerk, in open town-meeting, if no Justice of the Peace is present.†

III. *Penalty for examining Votes before the poll is closed.*

If the Moderator or selectmen presiding at any town-meeting, without the consent of the voter, shall read or examine, or permit any other person to read or examine the name or names written on his ballot or ticket, with a view to ascertain the name of the candidate voted for, before the poll is closed, the Moderator, selectman or selectmen, so offending, shall each forfeit to the use of the town *twenty dollars*, to be recovered by indictment.‡

OVERSEERS OF THE POOR.

I. *Their appointment.*

Towns, at their annual meeting, may choose any number, not exceeding twelve, of suitable persons, dwelling therein, to be Overseers of their Poor, and where such are not specially chosen, the Selectmen shall be Overseers of the Poor, *ex officio*.||

* Stat. 1785, ch. 75. § 6.
 † Stat. 1811, ch. 9. § 3.

‡ Stat. 1785, ch. 75. § 6.
 || Stat. 1793, ch. 69. § 1.

II *Their duty in regard to the relief and support of poor persons.*

1. As to persons settled in the town to which they are Overseers.

They shall have the care and oversight of all poor, indigent persons, settled in their respective towns; and shall see that they are suitably relieved, supported, and employed, either in the work-house or other tenements belonging to such towns, or in such other way or manner as they, at any legal meeting, shall direct, or otherwise at the discretion of said Overseers, at the costs of such town.*

2. As to persons having settlements in other towns.

It is also the duty of Overseers, in their respective towns, to provide for the immediate comfort and relief of all persons residing or found therein, not belonging thereto, but having lawful settlements in other towns, when they fall into distress, and stand in need of immediate relief, and until they shall be removed to the places of their lawful settlements, the expenses whereof, incurred within three months next before notice given to the town to be charged,† as also of their removal, or of their burial, in

* Stat. 1793, ch. 59. § 2.

† It has been determined that the notice to be given in this case, must be in writing, and signed by a major part of the Overseers of the Poor of the town giving notice, or by their order.—*Mass. Rep.* vi. 501.—*Dalton vs. Hinsdale.*

It has also been determined that if a written notification be given to one of the Overseers of the town in which the settlement of the pauper is, it is sufficient.—*Ibid.*

And if the notice be signed by one only of the overseers, but purporting to be by order of the whole, it is sufficient.—*Mass. Rep.* viii. 104.—*Westminster vs. Bernardstown.*

A notice from one town to another that the family of a certain person has become chargeable, &c. *without naming them*, is insufficient, on account of its generality.—*Mass. Rep.* xii. 307.—*Embden vs. Augusta.*

So notice that a certain person has become chargeable, is not sufficient notice that his wife and children have also become chargeable.—*Mass. Rep.* xiii. 547.—*Andover vs. Canton.*

Notice sent by mail is not sufficient, without proof of its being received.—*Mass. Rep.* xvi. 110.—*Groton vs. Lancaster.*

But a notice which, if unanswered, or particularly objected to, would be insufficient, may become sufficient by an acceptance of it by the adverse party, or by a waiver of any advantage arising from the deficiency; and if the town to which the notice is addressed, answer the

case of their decease, may be sued for and recovered; either in a civil action, by the town incurring the same, against the town wherein such persons had such settlements, or in the method by complaint, herein after prescribed: *Provided*, such action or complaint for damages be commenced or preferred within two years after the cause of action arose, but not otherwise. And in such civil action, the settlement of the pauper shall not be contested by the defendants, if it hath been then adjudged to be in their town upon such process as is herein after prescribed; otherwise it may be. And a recovery in such action shall bar the town, against which the same shall be had, from disputing the settlement of such pauper, in such town, with the town or district so recovering, in any future action or process, brought and prosecuted for the support or removal of such pauper.*

3. As to persons having no lawful settlement within the Commonwealth.

Overseers shall relieve and support, and in case of their decease, decently bury all poor persons residing or found in their towns, having no lawful settlements within this Commonwealth, when they stand in need, and may employ them as other paupers may be; the expense whereof may be recovered of their relations, if they have any chargeable by law for their support; otherwise it shall be paid out of the treasury of the Commonwealth, by warrant from the Governor, by and with the advice of Council, an account thereof having been first exhibited to, and examined and allowed by, the General Court. And upon complaint of such Overseers, any Justice of the Peace in their county may, by warrant directed to, and which may be executed by, any constable of their town,

notice, it is a waiver of any defect in it.—*Mass. Rep.* xii. 262.—*Paris vs. Hiram.*

If a town in which a pauper is settled, after receiving notice from another town that he has become chargeable to them, provide for him, and he afterwards again become chargeable to the latter town, a new notice will be necessary in order to enable them to recover the subsequent expenses.—*Mass. Rep.* xii. 316.—*Sidney vs. Augusta.*

Where the pauper's name was *La barron* and the notice was for supporting *Labern*, it was held to be not sufficient. 5 *Pick.* 190.

* *Stat.* 1793, ch. 59. § 9.

or any particular person by name, cause such pauper to be sent and conveyed, by land or water, to any other State, or to any place beyond sea, where he belongs, if the Justice thinks proper, if he may be conveniently removed, at the expense of the Commonwealth; but if he cannot be so removed, he may be sent to and relieved and employed in the house of correction, or work-house, at the public expense.*

4. As to persons imprisoned for Debt.

The Overseers of the Poor of any town, in which there is a county gaol, are authorized and directed, at their discretion, by their order in writing, to set to work, under their own direction, or the direction of any other suitable person, any debtor, committed to prison upon mesne process, or execution, *and actually chargeable to any town* in this Commonwealth, for his support, whether such prisoner shall have the liberty of the yard or not. And the order of said Overseers shall remain in force, until they shall revoke the same, or such prisoner shall provide for himself: *Provided however*, That no prisoner shall be required to labour more than is necessary to pay the expense of his support. And no prisoner shall be chargeable to any town, as a pauper, while such order of the Overseers respecting him shall remain in force, except for the deficiency of his earnings to pay the expense of his support.†

But by the statute of 1819, ch. 94. it is provided that no person, committed to prison for debt, shall be deemed a pauper so long as he or she shall be at large within the limits of the prison yard.

And by the statute of 1821, ch. 22, it is provided that no town shall be liable for the support of any poor debtor, confined in close prison, on mesne process or execution issued upon any cause of action accruing after the 14th day of March, 1820.

The duty, therefore, of Overseers, in a town in which there is a gaol, to set to work poor debtors confined therein is now only in case of a poor debtor, confined in close prison, and upon process issued upon a cause of action which accrued prior to the 15th of March, 1820.

* Stat. 1793, ch. 59. § 13.

† Stat. 1817, ch. 186. § 3.

III. *Of their powers in relation to removing to the places of their lawful settlement, persons chargeable, or likely to become chargeable, to the town.*

All persons actually chargeable, or who, through age or infirmity, idleness or dissoluteness, are likely to become chargeable to the places wherein they are found, but in which they have no lawful settlements, may be removed to the places of their lawful settlements, if they have any within the Commonwealth.* And in order to effect such removal, (and also to recover the expenses incurred for the relief of such persons, if said Overseers choose that mode in preference to a civil action) said Overseers may apply by complaint,† to any Justice of the Peace in their county, not an inhabitant of their town, who, after due proceedings had, as pointed out in the statute, may issue his warrant of removal, therein requiring the Overseers of the Poor in the town in which such persons have their lawful settlement to receive and provide for them. And such Overseers shall be obliged to receive and provide for such persons accordingly; and such Justice may also award execution for damages and costs, and may tax in costs a reasonable sum for the expense of removal; and the execution may be issued to and may be executed by a proper officer, in the county where the town is, against which it issues: *Provided*, That either party, as also any person who shall be adjudged likely to become chargeable and ordered to be removed, aggrieved at the judgment of such Justice, may appeal therefrom to the next Court of Common Pleas, to be holden in and for the same county, and shall produce copies, and enter and prosecute the same as other appeals are. And said Court shall hear and determine the same without a jury, and may award like warrant for removal, and like execution for damages and costs, *mutatis mutandis*; or may on complaint affirm the judgment of the Justice with additional damages and costs, where the appeal is not prosecuted, and carry such judgment into execution.

Such complaint may be originally made by said Overseers, if they see fit, to the Court of Common Pleas in their

* *Stat. 1793, ch. 59. § 10.* † For form of Complaint, see Appendix.

county, by filing the same with the clerk of said Court, and procuring a summons from him, and causing the same to be duly served; and such Court, upon such complaint, shall proceed to hear, determine, adjudge and grant warrant and execution, in the same manner as in cases coming before them by appeal; and in all their adjudications in the premises, they shall state the facts upon which their judgments are founded, to the end that error therein, if any, may be corrected by writ of error, in the Supreme Judicial Court, to which either party aggrieved shall be entitled, if purchased within a year, but not otherwise, and upon which, if judgment be reversed, such judgment shall be given, as ought to have been given below, and the plaintiffs in error shall be restored to all they lost by such erroneous judgment, with costs; but if the judgment be affirmed, the defendants shall recover costs. And said Supreme Judicial Court may send to said Courts of Common Pleas, and require them to state other facts, when it shall appear by suggestion or otherwise, that some material ones were omitted in the statement aforesaid, or to explain such as do not appear to the Court to be clearly stated, unless a new statement be agreed to by the parties. And depositions may be used before the Justice as well as Court of Common Pleas, on the trial of such complaints, when taken legally and for legal cause. And when expenses for support of a pauper are prayed for in such complaint, the same complaint may be proceeded upon to judgment, so far as respects his settlement and such expenses; the decease of the pauper pending the complaint notwithstanding. But all complaints and suits for removal of paupers, or recovery of expenses for their support to be made and prosecuted by the town of *Boston*, in the county of *Suffolk*, shall be made and prosecuted either in the county of *Middlesex* or *Norfolk*, and all such suits and complaints to be made and prosecuted by the town of *Nantucket*, in the county of *Nantucket*, or by any town in the county of *Duke's County*, shall be made and prosecuted either in the county of *Bristol* or *Barnstable*.* *Provided always*, That said Overseers may in all cases, if they judge it expe-

* Stat. 1793, ch. 59. § 11.

dient, previous to any such application to any Justice of the Peace, or Court of Common Pleas, send a written notification, stating the facts relating to any person actually become chargeable to their town, to one or more of the Overseers of the place where his settlement is supposed to be, and requesting them to remove him, which they shall have power to do, by a written order directed to any particular person by name, who is hereby authorized and required to obey the same; and if such removal is not effected, nor objected to by them in writing, after such notice, to be delivered in writing within two months after such notice to the Overseers of the town, requesting such removal, or to some one of them, then such Overseers may remove such person by land or water, as is most convenient, by a written order directed to and to be served by any person who shall be particularly mentioned in such order, to said place of his supposed settlement, the Overseers whereof shall be obliged to receive and provide for him; and their town shall be liable for the expenses of his support and removal, to be recovered by action as aforesaid, by the town incurring the same, and shall be barred from contesting the question of settlement with the plaintiffs in such action. And if any person lawfully removed, agreeably to this Act, to the place of his lawful settlement within this Commonwealth, shall voluntarily return to the town from which he was removed without their consent, he shall be deemed a vagabond, and upon conviction thereof, before any Justice of the Peace in the same county, may be sent to the house of correction.*

IV. Their duty in relation to the personal property of any deceased pauper.

Upon the death of any pauper, who, at the time of his decease, shall be actually chargeable to any town, the Overseers of the Poor of such town may take into their possession all the personal property belonging to such pauper. And if no administration shall be taken upon the estate of such pauper within thirty days after

* Stat. 1793, ch. 59. § 12.

his decease, said Overseers may sell so much of said property as may be necessary to pay the expenses incurred for such pauper. And if any part of such property shall be withheld from said Overseers, they shall have the same remedy for the recovery of such property, or the value thereof, that an administrator of the estate of said pauper might have in like case.*

V. Of their authority to bind out Poor Children.

Overseers of the Poor are empowered, from time to time, to bind out, to any citizen of this Commonwealth, by deed indented or poll, as apprentices, to be instructed and employed in any lawful art, trade or mystery, or as servants, to be employed in any lawful work or labour, any male or female children, whose parents are lawfully settled in, and become actually chargeable to their town; also, whose parents, so settled, shall be thought by said Overseers to be unable to maintain them, (whether they receive alms, or are so chargeable or not :) *Provided* they be not assessed to any town charges; and also all such who, or whose parents residing in their town, are supported there at the charge of the Commonwealth, or whose parents are unable to support them as aforesaid—that is to say, male children till they come to the age of twenty-one years, and females till they come to the age of eighteen, or are married; which binding shall be valid and effectual in law, as if such children had been of the full age of twenty-one years, and had by a like deed bound themselves, or their parents had been consenting thereto: provision to be made in such deed for the instruction of male children, so bound out, to read, write and cypher, and of females to read and write, and for such other instruction, benefit and allowance, either within or at the end of the term, as to the Overseers may seem fit and reasonable.†

It shall be the duty of said Overseers, to inquire into the usage of children so bound out, and to defend them from injuries. And upon complaint by such Overseers made to the Court of Common Pleas, in the county where their

* Stat. 1817, ch. 186. § 6.

† Stat. 1793, ch. 59. § 4.

town is, or where the child may be bound, against the master of any such child, for abuse, ill-treatment or neglect, said Court (having duly notified the party complained of) may proceed to hear the complaint; and if the same be supported, and the cause shall be judged sufficient, may liberate and discharge such child from his or her master, with costs, for which execution may be awarded; otherwise the complaint shall be dismissed, but without costs, unless it appear groundless and without probable cause, in which case costs shall be allowed the respondent.*

And any apprentice or servant so discharged, or whose master shall decease, may be bound out anew, for the remainder of the term, in manner aforesaid. And such Overseers may also have remedy by action on such deed, against any person liable thereby, for recovery of damages for breaches of any of the covenants therein contained, which, when recovered, shall be placed in the town treasury, deducting reasonable charges, and disposed of by the Overseers at their discretion, for the benefit and relief of such apprentice or servant within the term; the remainder, if any, to be paid him at the expiration thereof; and the Court before which such cause shall be tried originally, and on the appeal, may also, upon the plaintiff's request, if they see cause, liberate and discharge such apprentice or servant from his master, if it hath not been already done in the method before directed. And no action brought by Overseers shall abate by the death of some of them, or by their being succeeded in office, pending the action, but it shall proceed in the names of the original plaintiffs or the survivors of them.

And the Court of Common Pleas, either in the county where the Overseers binding, or the master of any apprentice or servant bound, live, may also, upon complaint of such master, for gross misbehaviour, discharge such apprentice or servant from his apprenticeship or service, after due notice to such Overseers, and [hearing thereupon.†

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* Stat. 1793, ch. 59. § 5.

† Stat. 1793, ch. 59. § 5.

VI. *Of their authority to set to work or bind out Idle Persons.*

Overseers shall have power to set to work, or bind out to service, by deed as aforesaid, for a term not exceeding one whole year at a time, all such persons residing and lawfully settled in their respective towns, or who have no such settlement within this Commonwealth, married or unmarried, upwards of twenty-one years of age, as are able of body, but have no visible means of support, who live idly, and use and exercise no ordinary or daily lawful trade or business to get their living by, and also all persons who are liable by any law to be sent to the house of correction; upon such terms and conditions as they shall think proper: *Provided*, that any person thinking him or herself aggrieved by the doings of the said Overseers, in the premises, may apply, by complaint to the Court of Common Pleas, in the county where they are bound or where the Overseers who bound them dwell, for relief; which Court, after due notice to the Overseers, and to their masters, shall have power, after due hearing and examination, if they find sufficient cause, to liberate and discharge the party complaining from his or her master, and to release him or her from the care of the overseers; otherwise to dismiss the complaint, and give costs to either party or not, as the Court may think reasonable.*

VII. *Of their powers and duties in relation to persons living without the bounds of any incorporated town.*

Poor persons standing in need of relief living without the bounds of any incorporated town shall be under the care of the overseers of the poor, appointed in the adjoining town wherein the inhabitants of such unincorporated place are usually taxed; and the same Overseers shall have the like authority to bind out the children of such poor persons, as they are vested with respecting the children of persons in like circumstances, inhabitants of the town in which they are appointed. And such Overseers may also set to work, or bind out as aforesaid, for

* Stat. 1793, ch. 59. § 6.

a space not exceeding one whole year at a time, all such persons above the age of twenty-one years, married or unmarried, residing in their county, but without the bounds of any town, as are able of body, but have no visible means of support, or who live idly, using no ordinary, daily lawful trade or business to get their living by, or who are liable by any law to be sent to the house of correction, and shall receive and apply their earnings, (deducting reasonable charges) to the support of them or their families, if any they have, at their discretion, saving to such persons the like remedy for relief, if they think themselves aggrieved, as is provided for persons set to work, or bound out for like causes by Overseers of towns.

VIII. Of their authority in relation to houses of ill fame.

Any person suspected of keeping a house of ill fame resorted to for the purpose of prostitution or lewdness, may be apprehended by warrant from any Justice of the Peace in the county on complaint of the Overseers in the town where the house is; and on conviction of the offence before said Justice or before the Court of Common Pleas, on indictment, may be ordered to the house of correction; and after such conviction shall not be allowed to keep lodgers or boarders in any town without the license of the Overseers of the Poor thereof.*

IX. Of their authority as to passengers on board any vessel coming from a foreign port.

By stat. of 1830, ch. 150, every master of a vessel coming from any place without the commonwealth, with alien passengers on board who may become chargeable as paupers, is required to give to the selectmen of the town a complete list of such passengers before they leave the vessel, with the names of the places from which they were taken on board, and give bond with sufficient sureties in the penal sum not exceeding two hundred dollars for each alien passenger, with condition to indemnify the inhabitants of said town and also the commonwealth from

* Stat. 1793, ch. 59. § 8.

all manner of expense which may arise from providing for such alien passengers for three years then next coming.

The selectmen may dispense with such bond, if in their judgment, no expense is to be apprehended from any of such alien passengers within three years.

And the bond shall also be dispensed with, if the master of the vessel shall, before the landing of such alien passengers pay into the town treasury the sum of five dollars for each and every alien passenger whom he may intend to land.

Forfeiture for landing such passengers contrary to law.

If any Master of a vessel shall permit any such alien passenger to land contrary to the foregoing provisions, such Master and the owner or owners, or the consignee thereof shall severally forfeit the sum of two hundred dollars for each and every alien passenger so landed, which sum may be recovered by action of the case, one half to the use of the commonwealth and the other to the person suing for the same.

And the Master is also liable to a penalty of one hundred dollars, if, to avoid the operations of the foregoing law, he shall land such alien passengers at any other place than that to which his vessel shall be destined.

X. Of their authority to act for the town; and of the manner of executing their powers.

In all actions and prosecutions by complaint founded on the statute of 1793, ch. 59, for or against any town, or against any individual, the Overseers of the Poor thereof, or any person by writing under their hands appointed, shall and may appear, prosecute or defend the same to final judgment and execution, in behalf of such town: and every act or thing required or authorized by them to be done by this Act, may be done by them or the major part of them.*

* Stat. 1793, ch. 59. § 14.

XI. *Of giving notice to other Towns.*

By stat. of 1828. ch. 142. it is sufficient for Overseers of the Poor to send their notifications and answer by mail (postage being) and that shall be deemed sufficient, from the time it arrives at the Post Office to which it is sent.

Power of Overseers over poor persons under their care.

The same Act gives to Overseers of the Poor the same power and authority over paupers which Overseers of Workhouses have; and authorizes two or more towns to unite in building houses for the reception and employment of the poor, in the same manner as they now have to build workhouses. See Stat. 1788, ch. 30.

PARISHES.

The following is the act passed April 1, 1834, relating to Parishes and Religious Freedom.

It provides that all the rights, privileges, and immunities of the several Parishes and Religious Societies within this Commonwealth, whether corporate or unincorporate, are hereby confirmed unto them, except so far as the same may be limited or modified by the provisions of this act, or the eleventh article of the Amendments to the Constitution. And the respective churches connected and associated in public worship with such Parishes and Religious Societies, shall at all times have, use, exercise and enjoy, all their accustomed privileges, and liberties, respecting divine worship, church order and discipline, and shall be encouraged in the peaceful and regular enjoyment and practice thereof.

All persons now belonging to any Parish or Religious Society, shall be taken and held to be members thereof, until they shall file with the Clerk of such Parish or Society, a written notice declaring the dissolution of their membership. And no person shall hereafter become or be made a member of any parish or Religious Society, so as to be liable to be taxed therein for the support of pub-

lic worship, or for other parish charges, without his express consent for that purpose first had and obtained.

The several Parishes and Religious Societies, at any legal meeting for that purpose, duly notified and warned, may make, ordain, and establish by-laws, prescribing the manner in which persons may become members thereof; and such other by-laws as they may deem expedient; *provided*, that such by-laws be not repugnant to the laws and Constitution of the Commonwealth: *and provided also*, that any person, who at the time of the passage of this act, shall be an inhabitant of any territorial Parish, and not a member thereof, but who may formerly have been a member of the same, shall, at any time within six months from the passage of this act, have a right to re-unite himself to such Parish, by leaving with the Clerk thereof a written notice of his intentions so to do. And any inhabitant of such territorial Parish, upon arriving at full age, shall have a right to become a member of the same, by filing notice of his intentions as aforesaid, within six months from the time such inhabitant shall arrive at full age. And no person shall have a right to vote in the affairs of any territorial parish, until he shall have been a member thereof for the term of six months.

The several Parishes and incorporated Religious Societies are hereby authorized, to cause all sums of money by them legally voted to be raised, for the support of public worship, or for other lawful Parish charges, to be assessed on the polls and estates of all the members thereof, in the same manner and proportion as state, county, or town taxes, are or shall be by law assessed. *Provided*, That nothing in this act contained, shall be construed to enlarge or diminish the powers of taxation, enjoyed by any parish or Religious Society by virtue of any special law, or act of incorporation; and that no manufacturing or other corporation shall be liable to taxation for any parochial purposes, unless such corporation shall consent to be so taxed by a vote passed at a legal meeting thereof, called for that purpose.

In case any donation, gift or grant, shall hereafter be made to any unincorporated Religious Society, such Society shall have like power to manage, use, and improve the same, according to the terms and conditions on which

the same may be made, as incorporated societies now have, or may hereafter have by law ; to elect suitable trustees, agents or officers therefor, and to prosecute and sue, for any right which may vest in such Society, in consequence of such donation, gift or grant.

Any Parish or Religious Society, may organize itself agreeably to the statute of seventeen hundred and ninety-eight, chapter ten, entitled "An Act regulating Parishes and precincts, and the officers thereof," and the several acts in addition thereto. And any Justice of the Peace, within the county in which any Parish or Religious Society may be, which is not organized, agreeably to said acts, is hereby authorized, upon application in writing therefor, by any ten or more of the legal voters thereof, to issue his warrant for calling the first meeting of the same. And such Justice shall insert in his warrant the objects of such meeting, and shall direct the same to some one of such applicants, requiring him to notify and warn the legal voters of such Parish or Religious Society, to meet at such time and place as shall be appointed in such warrant, and upon due return thereof, such Justice shall preside at such meeting, for the choice and qualification of a Clerk, who shall enter, at large, upon the records of such Parish or Religious Society, the proceedings had in the organization thereof. And such Parish or Religious Society may thereupon proceed to choose a Moderator and all such officers, and transact all such business as Parishes are by law authorized to choose and transact, in the months of March and April annually. *Provided*, That the subject matter thereof shall be inserted in said warrant.

Any Parish or Religious Society organized agreeably to the provisions herein contained, shall have all the powers and privileges, and be subject to all the duties, liabilities and requirements which incorporated Parishes not territorial now have, or are subjected to, or may hereafter have or be subjected to by the general laws of this Commonwealth, with power to have, hold, manage and improve, so much estate, real or personal, as may be necessary for the appropriate objects of such organization and no more ; *Provided*, that all the powers derived from *any such organization*, may at any time be revoked by

the Legislature. And at all legal meetings of Parishes and Religious Societies, the qualifications of voters shall be the same as are now required by law for voters in town affairs.

It shall be the duty of the Assessors of Parishes and Religious Societies, in assessing or levying taxes for the support of public worship, and all charges incident thereto, to assess or levy the same upon all the property both real and personal (not exempted by law from taxation) of all the members thereof, wherever the same may be situated within the Commonwealth, and no citizen shall be assessed or liable to pay any tax for the support of public worship or other parish charges, to any Parish or Religious Society whatever, other than to that of which he is a member.

The sixth section of an "Act providing for the due observation of the Lord's day, and repealing the several laws heretofore made for that purpose," passed the eighth day of March, in the year of our Lord one thousand seven hundred and ninety-two:—also, an "Act providing for the public worship of God, and other purposes therein mentioned, and for repealing the laws heretofore made relating to this subject," passed on the fourth day of March, in the year of our Lord one thousand eight hundred: also, all laws providing for the settlement of ministers, and the support of the public worship of God, made prior to the adoption of the constitution of this Commonwealth;—also, "an Act respecting public worship and religious freedom," passed the eighteenth day of June, in the year of our Lord one thousand eight hundred and eleven:—also "an Act in addition to an Act in addition to an Act respecting public worship and religious freedom," passed on the sixteenth day of February in the year of our Lord one thousand eight hundred and twenty four, are hereby repealed, saving and excepting any rights or liabilities that may heretofore have arisen or accrued by virtue thereof.

POOR.

I. Duty of towns to support Poor.

There are no obligations upon towns by the common law to support paupers; their liability wholly results from the provisions of statutes. Every one therefore who seeks for a reimbursement of any expenses for the support of the Poor from any town, must bring himself strictly within the provisions of the Acts.

Therefore, if one voluntarily maintains a pauper, no action will lie to recover compensation, unless under the provisions of the statute, or be founded on express promise.—*Mass. Rep.* vi. 501.

Every town shall be holden to relieve and support all poor and indigent persons, lawfully settled therein, whenever they shall stand in need thereof; and may vote and raise moneys therefor, and for their employment, in the same way that moneys for other town or district charges are voted and raised.—Stat. 1793, ch. 59.

Every town shall be holden to pay any expense which shall be necessarily incurred for the relief of any pauper, by any inhabitant, not liable by law, for his or her support, after notice and request made to the overseers of the said town, and until provision shall be made by them.—*Ibid.*

II. Of the liability of individuals to support their poor kindred; and of Paupers to refund to towns the expenses of their support.

The kindred of any poor person, if any he shall have, in the line or degree of father or grand-father, mother or grand-mother, children or grand-children, by consanguinity, living within this Commonwealth, of sufficient ability, shall be holden to support such pauper, in proportion to such ability.

And the Court of Common Pleas in the county where any such kindred, to be charged, shall reside, upon complaint made by any town or kindred who shall have been at any expense for the relief and support of any such

pauper, (which complaint being filed in the Clerk's office of any such Court, and summons thereon issued, directed to and served by any proper officer to serve original summons, and in the manner they are by law to be served, fourteen days before the sitting of such Court, shall be sufficient to hold the persons summoned to answer thereto) may, on due hearing, either upon the appearance or default of the kindred so summoned, assess and apportion such sum as they shall judge reasonable therefor, upon such of said kindred as they shall judge of sufficient ability, and according thereto, to the time of such assessment, with costs; and may enforce payment thereof by warrant of distress. *Provided* such assessment shall not extend to any expense for the relief afforded more than six months previous to the filing of such complaint.

And such Court may further assess and apportion upon them such weekly sum, for the future, as they shall judge sufficient for the support of such pauper, to be paid quarterly, till further order of Court; and upon application from time to time of the town or kindred, to whom the same shall have been ordered to be paid, the clerk of said Court shall issue, and may renew a warrant of distress for the arrears of any preceding quarter.

And the Court may further order with whom of such kindred, that may desire it, such pauper shall live and be relieved, and for such time with one, and such with another, as they shall judge proper, having regard to the comfort of the pauper, as well as the convenience of the kindred. And, upon suggestion, other kindred of ability, not named in the complaint, may be notified, and the process may be continued, and upon due notice, whether they appear or are defaulted, the Court may proceed against them in the same manner as if they had been named in the complaint. But if such complaint be not entered, or be discontinued, or withdrawn, or be adjudged groundless, the respondents shall recover costs.

And such court may take further order, from time to time, in the premises, upon application of any party intended, and may alter such appointment as the circumstances may vary.

The kindred of a *pauper* cannot be called upon to contribute to his support, but by the overseers of the town

where he has his legal settlement, or by some other of his kindred. *Mass. Rep.* iii. 436, & v. 244.

The only remedy for a town, other than that wherein he is settled, which has provided for a *pauper*, is by an action against the town where he has his settlement, and not against his relations.

In such action, the declaration must aver the settlement and notice to the town liable, within three months from the commencement of the expense.—*Ibid.*

A husband is always liable to support his wife, if he is able to support her; and the town furnishing relief to her may immediately call upon him without resorting to the town where his settlement is, the remedy being cumulative.—*Mass. Rep.* xiv. 227.

A town has a right to the services of a pauper to aid in his support, and they may be assigned to any person who will contract for his support.—*Mass. Rep.* xviii. 23.

The inhabitants of any town who have incurred expense for the support of any pauper, whether he was legally chargeable to them by means of his settlement, or not, may recover the same against such person, his executors or administrators, in an action of assumpsit, for money paid, laid out and expended for his use.*

Upon the death of any pauper, who, at the time of his decease, shall be actually chargeable to any town, the Overseers of the poor of such town may take into their possession all the personal property belonging to such pauper. And if no administration shall be taken upon the estate of such pauper within thirty days after his decease, said Overseers may sell so much of said property as may be necessary to pay the expenses incurred for such pauper. And if any part of such property shall be withheld from said Overseers, the same shall have the same remedy for the recovery of such property, or the value thereof, that an administrator of the estate of said pauper might have in like case.

This statute extends only to such expenses as have accrued since the Act went into operation, to wit, June 1, 1818.—*Mass. Rep.* xvi. 215.

* Stat. 1817, ch. 186. § 5.

III. Liability of towns to provide for poor persons, not having a legal settlement in the town.

See *Overseers of the Poor*.

IV. Liability of towns to reimburse expenses paid for the support of poor in other towns.

1. To Towns.

Towns in which gaols are situated, are liable to support persons committed on civil process, whether the debtor have his settlement there or not; and they have their remedy over against the place of the debtor's settlement, if within the state, otherwise they may apply to the Commonwealth for a reimbursement.—*Mass. Rep.* ii. 547, & 564.—*Ibid.* v. 244. & 328.

Idle and disorderly persons confined in a house of correction unable to support themselves are paupers within the statute, and if the town where the house is situated, provides for their support, the town where they have their settlement shall refund the expenses.—*Mass. Rep.* xii. 355.

Or the keeper of the house may call for his reimbursement immediately upon the place of the pauper's settlement, without recurring to the town where he is located.—*Stat. of 1797, ch. 62. sec. 3.*—*Stat. 1826. ch. 142.*

In regard to persons confined in prison on criminal charges, the law is otherwise; towns have no concern in their support.—*Stat. 1784, ch. 48.*

By recent statutes, towns are now generally relieved from the expenses of supporting debtors in prison.

Every person in want or distress is to be relieved immediately by the town where he falls into distress, whether he be able to support himself or not.—*Mass. Rep.* xii. 262.

But the town that is called upon to reimburse, may set up as a defence to the suit, the ability of the person to maintain himself.—*Ibid.*—*Mass. Rep.* i. 459.

If a pauper whose settlement is in the town of B. be supported by the town of A. in the town of C. the town

of B. is still liable to A. for the expense of his maintenance.—*Mass. Rep.* xi. 483.

An express promise by the overseers of a town to support a pauper, is binding upon the town.—*Mass. Rep.* xvii. 123, & vi. 501.

A town in which the wife has her settlement is not liable to support the husband at the charge of the State, unless the wife be removed there.—*Mass. Rep.* xiii. 501.

2. To private persons.

An individual can maintain no action against a town for his expenses in relieving a poor person, only against that of which he himself is an inhabitant.—*Mass. Rep.* xii. 333, & xv. 286.

As where a surgeon performed a difficult operation upon a poor person in order to save his life, the surgeon not being an inhabitant of the town, could maintain no action for his services.—*Mass. Rep.* xiv. 396, & 448.*

An inhabitant has no remedy, if he voluntarily maintain a pauper, having a settlement in another town, unless he gives due notice to the overseers.—*Mass. Rep.* vi. 501, & xiv. 448.

It is no defence to an action, brought by an inhabitant against his town, that some individual is liable to support the pauper.—*Mass. Rep.* xv. 286, & iv. 384.

A verbal notice and request to the overseers of the poor to provide for a destitute person is sufficient.—*Mass. Rep.* xv. 286.

V. Of the amount that towns are liable to reimburse for the support of Paupers.

A town is not liable to pay a charge for the trouble of overseers, in providing for a pauper in another town.—*Mass. Rep.* xi. 327.

Nor can a keeper of a gaol recover for expenses in procuring beds, blankets, &c. for the use of poor debtors.—*Mass. Rep.* xiii. 247.

* These were the cases of those eminent Surgeons, Drs. Kittredge and Miller; the names of the plaintiffs ought to be remembered as friends of humanity. The defendants no doubt had reason for the course they took.

If support be furnished any person in any town other than in the one in which such person may have a legal settlement, the town in which such person has a legal settlement shall not, in any case, be subjected to a greater expense than at the rate of one dollar per week, during the continuance of such supplies: *Provided* the town, in which such person has a legal settlement, shall cause such pauper to be removed within thirty days from the time of receiving legal notice that such support has been furnished.*

Under this statute, it has been determined that the removal is a condition precedent, which must be strictly performed: so that while a town was making preparations for the removal of the pauper, she removed of her own accord to another town; it was held that the defendant town was liable for reasonable expenses, although they exceeded one dollar a week.—4 *Pick.* 45.

VI. *Of the liability of towns to support poor persons confined as debtors in prison.*—[See overseers of the Poor. Art. I. pl. 4.]

VII. *Of the forfeiture for bringing and leaving a Pauper in a town.*

If any person shall bring and leave any poor and indigent person in any town wherein such pauper is not lawfully settled, knowing him to be poor and indigent, he shall forfeit and pay the sum of *twenty pounds* for every such offence, to be sued for and recovered by and to the use of such town, by action of debt, in any court proper to try the same.

This offence consists in bringing the poor person into a town with the intent to subject the town to an expense.—*Mass. Rep.* xvi. 393, & xviii. 465.

If a poor person is on a journey to a place beyond the State, and one send a servant to convey him to a town on his way, and the servant should leave him in another town, with a view to subject said town to expense, the servant only is liable to the penalty.—*Mass. Rep.* xviii. 465.

* Stat. 1821, ch. 94. § 3.

† Stat. 1793, ch. 59. § 15.

VIII. *Of the evidence necessary to accompany accounts exhibited for the support of State Paupers.*

1. All pauper accounts to be made up to the first day of January.

By the Stat. 1830. Ch. 120, all claims by towns for support of state paupers must be so made as to include all claims for such charges up to the first of January annually; and no charge, which shall not be presented within the month of January, shall be allowed for the support of any such pauper: and the selectmen or Overseers of the poor must certify that the whole amount charged in the annexed account has been expended for the support of the person or persons borne on the list, for the time therein specified.

2. Rates of charge.

All accounts for support of paupers must be made out at a fixed price, not to exceed ten cents per day for paupers over twelve years of age, and not to exceed six cents per day for those under twelve years, five dollars for the funeral expenses of each pauper deceased over twelve years, and two dollars and fifty cents for each one under twelve years.

3. How accounts are to be made out.

The Selectmen or Overseers of the poor, in making out accounts against the Commonwealth, are required to make a certificate shewing the name of each pauper, age, place of nativity, time of coming into the Commonwealth, whence such person came, residence since coming into the Commonwealth, the time of becoming chargeable, when discharged, time of death, or time to which the charge is made (if the pauper still continues chargeable) the number of days chargeable; and in all cases where said charge is for the support of any pauper not already mentioned on the State pauper list, the account must be accompanied by a certificate that neither of said persons has ever gained a settlement in any city, town or district within this Commonwealth, by deriving the same from parents, or grand-parents, nor by any provisions of an Act passed Feb. 11, 1794, specifying what shall consti-

tute a legal settlement. And also that he or she has no kindred within this Commonwealth by law obliged to support him or her; and in case such person came into this Commonwealth before April 10, 1766, whether he or she was warned according to law, to depart from the town where he or she resided.

And if such charge be for payment of expenses incurred for the support of a woman who shall have married a person not an inhabitant of this Commonwealth, or for the child of such woman; then the selectmen or Overseers shall certify that such woman or child has no legal settlement in any place in this Commonwealth, according to the existing laws for determining questions of habitancy; in all which certificates, the said selectmen or Overseers shall certify that they made the same upon the best evidence they could obtain. Stat. 1798. Ch. 64. 1830. Ch. 120.

No male person over the age of twelve years and under sixty, while of competent health to labour, shall be considered a state pauper and entitled to support as such.*

Whenever the overseers of the poor in any town shall exhibit an account against the same for the support of paupers, they shall certify that no part of such account is for the support of any male person over twelve years and under sixty years of age, while of competent health to labour.*

IX. *Of the support of paupers in the House of correction.*

Whenever any person is committed to any house of correction, for any of the causes named in the several acts for suppressing vagabonds, &c. the keeper of such house, shall receive a reasonable compensation, to be determined by the County Commissioners, upon due inquiry into the circumstances of each case, for the board and keeping of such person; to be paid out of his or her own estate, if any there be, if not then by such of his kindred, as would be liable by law for his support, and if there be no such kindred then by the town or city

* Stat. 1823, ch. 21.

where he has his settlement, and if such prisoner have no place of settlement in the State, then the expense is to be borne in part by the county and in part by the State.

The accounts of all keepers of Houses of Correction shall be settled by the County Commissioners and all sums not recoverable of the prisoner, his kindred or of some town or city shall be paid to such keeper from the County, but of the sums so paid from the county treasury there shall be allowed by the Commonwealth and passed to the credit of the County, the same amount as is allowed by law for State paupers. Stat. 1826, ch. 142.

X. Of the Settlement of Paupers.

The term *settlement*, in reference to paupers, is a technical word of definite meaning, and is equivalent to *inhabitaney* and *residence*, as used in the ancient statutes and in common parlance among the people of this State. It merely implies the corporation that is liable for the support of a poor person, in consequence of some supposed meritorious act done by such person or his ancestors. And it may be either *derived*, as by birth or marriage; or it may be *acquired*, by owning certain estates, and thus against the will of the corporation. Or it may be obtained with their *consent*, as by serving in certain important town offices—by being a *settled* ordained Minister of the Gospel, or by a payment of taxes accompanied by a long continued residence.

Formerly, questions upon this subject were involved in great uncertainty, and subjected towns to expensive litigation. But by persevering in a well-digested system for a course of thirty years, aided by a series of learned adjudications in our law reports, questions of settlement are probably as well understood as any branch of the law.

The office of *Overseer of the Poor* is a trust of great importance, not only to the welfare of the unfortunate persons *whom we always have with us*, but also to the proper management of the town funds, a large proportion of which is subject to their control. A great part of the evil of the present system results from changing these officers too frequently, and committing to inexperienced hands the most important office in the gift of the town.

There are, at this day, comparatively few *settlements* that are not determined by the last general Act upon this subject, passed February 11, 1794;* and which has continued with but a single alteration, as will be hereafter shewn.† But as it is often necessary to trace back settlements to a period more remote, we will give a summary of the laws prior to that period.

1. Of settlements prior to the repeal of the *warning out* law, April 10, A. D. 1767.‡

By provincial Acts passed in A. D. 1692, A. D. 1700, and amended in A. D. 1739,§ it was provided in addition to the usual provisions of obtaining the approbation of the town by a vote, (a mode of acquiring a settlement enjoyed by few) that any person who dwelt in any town for the space of one year without being warned to depart by the constable, such person should thereby gain a settlement. And no act of the assessors in rating such person should subject the town to expense for his support.

If a man was once warned, he could not gain a settlement in that town, unless he had removed therefrom without an intention of returning, and afterwards dwelt there a year without a second warning.—*Mass. Rep.* iv. 131.

One hired a house and sent his family into a town, intending to follow them, which intention he afterwards executed. It was held that his residence as well as that of his family, (none of them having been warned) must be computed from the time of the first removal of the family there.—*Mass. Rep.* xiv. 363.

A mariner, making his home in a town from which he followed his calling, acquired a settlement, although he was at sea the greater part of the time.—*Mass. Rep.* iv. 312.

Minors, whether legitimate or not, could not gain a settlement by residence, for they were not subjects of warning or removal.—*Mass. Rep.* xii. 383, & iv. 123.

But a warning of the parent, would not prevent the settlement of a child afterwards born, provided he dwelt

* Stat. 1793, ch. 34. † Stat. 1821, ch. 94. ‡ 7 Geo. III. ch. 3.

§ See stat. 4 W. & M. ch. 13.—12 W. III. ch. 4.—13 Geo. II. ch. 1.—12 Geo. II. ch. 3.

in the town a year after he came of age.—*Mass. Rep.* xvi. 454.

A warning of one with his family, without naming the individuals, was held sufficient to prevent the wife and infant child from gaining a settlement, because they were not subjects of removal.—*Mass. Rep.* iii. 322.—xii. 383.

A warning was insufficient, that omitted to state the length of time that the pauper had dwelt in the town.—*Mass. Rep.* x. 506.

Where a stranger was received and entertained by an inhabitant of a town, previous to April 10, 1767, and his residence there, was designedly concealed so that the town officers had no opportunity to warn him to depart, he did not gain a settlement.—*Newbury v. Harvard*, 6 *Pick.* 1.

2. Of settlements from April 10, A. D. 1767, to Feb. 11, 1794.

After the repeal of the *warning out* laws in 1767, there were no methods of gaining settlements, unless by a vote of the town,* until the Act of June 23, 1789,† which was repealed in 1794,‡ when the present system took effect. Before its repeal, however, settlements were gained under the 4th mode in that Act, to wit:—

“Every person being a citizen of the Commonwealth, who shall be seized of an estate of freehold in the town, of the clear annual income of *three pounds*, and shall reside thereon, or within the same town, occupying and improving the same in person for the space of *two whole years*, shall thereby gain a settlement.”

Under this Act it has been held, that it was not necessary a man should *actually* and *continually* dwell upon the land, but if his absence was occasional, and for particular purposes; on a voyage, or at college, for example, he might gain a settlement.—*Mass. Rep.* vii. 1.

So a minor might gain a settlement, and if his land was *occupied* and *improved* by his servants or guardians, it was sufficient.—*Ibid.*

But if the lands were leased, so that the tenant only

* *Mass. Rep.* iv. 131, 452.—xiii. 547.

† *Stat.* 1789, ch. 24. § 2.

‡ *Stat.* 1789, ch. 14. § 1.

had the right of occupation, no settlement could be acquired.—*Ibid.*

A freehold in right of a wife is sufficient.—*Mass. Rep. iv. 384.*

But a right of dower, in the estate of a former husband, was insufficient to give a settlement, until the dower was assigned.—*Ibid.*

3. Of the modes of acquiring settlements since Feb. 11, 1794.

The statute of 1793, ch. 34. sec. 1. provides that all settlements gained shall remain, until lost by gaining others, in some of the ways following, as mentioned in said Act.

“1. A married woman shall follow and have the settlement of the husband, if he have any within the State, otherwise, her own at the time of marriage shall not be lost or suspended by the marriage. And if the wife shall be removed to her place of settlement, and the husband shall want relief from the State, he shall receive it in the town where the wife has her settlement, at the expense of the Commonwealth.”

It is not material, that the marriage should be solemnized within this State, provided it be such a marriage as our laws recognize; nor is it material what was the age of the parties, provided they were competent to contract matrimony.—*Mass. Rep. ix. 201.*

Where the husband has no settlement, there must be a removal of the wife to make the town liable.—*Mass. Rep. xiii. 501.*

But a void marriage, (with an idiot, for example) will not communicate a settlement.—*Mass. Rep. xii. 363—xvi. 157.—xviii. 506.*

A divorce does not affect the settlement of the wife.—*Mass. Rep. ix. 201.*

“2. Legitimate children shall follow and have the settlement of their father, until they gain one of their own; but if he have none within the Commonwealth, they shall follow and have the settlement of their mother, if she have any.”

By the common law, minor children, after their father's death, follow the mother's new settlement until she

takes a second husband ; and such settlement remains to them, notwithstanding the subsequent marriage of their mother.—*Mass. Rep.* xvi. 52 & 135.

But this statute varies the common law principle, inasmuch as after the death of the father, minor children follow all the new settlements of the mother, however acquired.—*Mass. Rep.* xviii. 197.

Children of full age do not follow the new settlements of their parents.—*Mass. Rep.* iv. 493.

Nor do female children under age, if freed from their parents by marriage or other legal emancipation.—*Mass. Rep.* xiii. 469.

But if a male infant or minor marry, he is not thereby emancipated so as to be capable of gaining a settlement in his own right.—*Mass. Rep.* xv. 203.

An idiot from birth, will follow the new settlements of the father, being considered incapable of gaining one in his own right.—15 *Mass. Rep.* 237.

But if one becomes *non compos*, after he comes of full age, he does not follow the new settlements of the father.—3 *Pick.* 173.

“ 3. Illegitimate children shall follow and have the settlement of their mother, at the time of their birth.”

They do not follow any new settlement the mother may acquire ; their first settlement remains until they gain one in their own right.—*Mass. Rep.* xiii. 381.

By the common law, such children were settled in the place of their birth ; but by the provincial statute of 7 Geo. III. ch. 3, they had and *followed* the settlement of their mother ; and the same principle was adopted in the statute of 1789, ch. 14, and so continued until the passing of the present statute.—*Mass. Rep.* iv. 131.—xiii. 547.—xiv. 382.—xii. 429.*

“ 4. Any person of twenty-one years of age being a citizen of the United States, having an estate of inheritance or freehold in the town where he dwells and has

* *Hearsay* evidence, cannot be admitted to prove the place of a pauper's birth. 4 *Pick.* 174.

his home, of the clear yearly income of *three pounds*, and taking the rents and profits thereof three years successively, whether he lives thereupon or not, shall thereby gain a settlement."

This provision of the statute being the source of expensive and tedious litigation, to determine the value of the *yearly income*; it was varied by the statute of 1821, ch. 94, which provides,

"That any person of twenty-one years of age, being a citizen of the United States, having an estate of inheritance or freehold in any town, and living on the same three years successively, shall thereby gain a settlement."

And the 4th mode in the statute of 1793, as above recited is repealed; but as many settlements were gained under it, we will notice some of the expositions of the Court upon this part of the statute.

If a person is lawfully in possession of an estate as above described, taking the rents and profits, he gains a settlement, although his title to the estate is defeasible.—*Mass. Rep.* xi. 327.

The clear yearly income, must be *three pounds* free from all charges, and if the estate is mortgaged the interest of the mortgage must be deducted.—*Mass. Rep.* vi. 50.—vii. 3.—xi. 327.

But if the annual income be *three pounds*, after paying the interest, the tenant gains a settlement notwithstanding the mortgage.—*Mass. Rep.* xi. 327.

The question whether a settlement is gained by owning a freehold for a period partly subsequent to the statute of 1821, ch. 94, and partly prior to that time, under the statute of 1793, ch. 34, perhaps is settled in the negative, by the case of *Rutland vs. Mendon*.—*Mass. Rep.* xviii. 154.

One who received the profits of an estate in dower, for three years, between the assignment of the commissioners and the acceptance of their report by the Judge of Probate gained a settlement. 5 *Pick.* 449.

The annual income must be three pounds, each and every year, otherwise the estate does not communicate a settlement.—3 *Pick.* 198.

"5. Any person of twenty-one years of age, a citizen of the United States, having an estate, the principal of which shall be set at 60*l.* or the income at 3*l.* 12*s.* in the valuation of estates made by assessors, and being assessed for the same, to state, county and town taxes, in the town where he dwells, shall thereby gain a settlement."

The term "estate," here means an estate to which the person assessed for it has a legal title, and nothing less than an estate for years, and for the term of five years at least, will confer a settlement.—*Mass. Rep.* xv. 253.

In this case, the Court said the pauper must have held an *interest in the estate*, which in the judgment of the assessors was worth 60*l.* at one time; and the mere circumstance of being taxed for the estate of another man, for five successive years, would not confer a settlement.—*Mass. Rep.* xv. 253.

But it is not essential that the taxes be paid.—*Mass. Rep.* xv. 160 & 253.

"6. Any person being chosen and actually serving one whole year in the office of Clerk, Treasurer, Selectman, Overseer of the Poor, Assessor, Constable, or Collector of Taxes, in any town, shall thereby gain a settlement."

A Collector of a school district tax is a Collector of taxes, within the intent of this section.—*Mass. Rep.* xv. 523.

To acquire a settlement in this mode, the officer must reside in the town, and actually serve in the office, for one whole year.—*Mass. Rep.* xviii. 129.—xii. 262.

"7. All settled ordained ministers of the gospel shall have their settlements in towns where they are ordained."

"8. Any person may be admitted an inhabitant of any town, at a legal meeting, in the warrant for which an article shall be inserted for that purpose."

"9. All citizens of the United States, dwelling in any unincorporated place at the time of its incorporation in a town, shall thereby gain a settlement therein."

"10. Upon division of towns, every person having a legal settlement therein, but being removed therefrom at the time of such division, and not having gained a legal settlement elsewhere, shall have his legal settlement in that town wherein his former dwelling-place or home shall happen to fall upon such division. And when any new town shall be formed from one or more old towns, all persons legally settled in such old towns, and actually dwelling in the new town at the time of its incorporation, shall be settled therein : *Provided nevertheless*, that the act of incorporation shall not of itself confer a settlement ; nor shall it prevent a person from gaining a settlement by the same means he would have gained one if the new town had not been made."

When part of an existing town is *annexed* to another *existing* town, persons dwelling on the parts detached, having settlements in their own towns, acquire new settlements in the towns to which they are transferred ; but the principle is confined to those only who actually *dwelt* there at the time of the annexation.—*Mass. Rep.* vii. 156 & xviii. 144.

"11. Any minor who shall serve an apprenticeship in any town for four years, and shall set up the same trade within one year, being then of age, and shall carry on the same trade within the town for the space of five years, shall thereby gain a settlement."

"12. Any person being a citizen of the United States, of the age of twenty-one years, who shall reside in any town for the space of ten years together, and pay all State, county or town taxes duly assessed on such person's poll or estate, for any five years within said time, shall thereby gain a settlement."

The ten years' residence must be uninterrupted ; and any absence, however short with the intention of permanently changing the place of abode, will prevent the gaining a settlement.—*Mass. Rep.* x. 394.

If, before the expiration of the ten years' residence, the pauper calls for aid, which is furnished him, and the

expenses thereof be reimbursed by the town where he is lawfully settled, this will be such an interruption of his residence as will prevent his gaining a settlement.—Mass. Rep. xiii. 460.

As the payment of taxes within the town seems to be the principal cause of the settlement, it is not material that the pauper should have had a *fee* or even a *freehold* in the estate for which he had paid taxes. Thus if a person be taxed for a piece of land which he occupies from year to year, or by sufferance, it will be considered as such person's estate, under the 12th, but not under the 5th mode of gaining a settlement.—Mass. Rep. xiii. 460.—xv. 253.

If the assessors omit to tax a person, (able to pay taxes,) whether wilfully or from accident, such omission will not prevent his gaining a settlement, coupled with the ten years' residence.—Mass. Rep. v. 430.

So if one pay town and State taxes, and the county tax be omitted in the assessment, this is *prima facie* evidence of his ability to pay county taxes also, and he will gain a settlement.—Mass. Rep. v. 435.—xi. 327.—x. 394.

So if one own a farm, and reside thereon ten years, paying the taxes five years, he will acquire a settlement in the town, notwithstanding he have a family in another State, which he occasionally visits.—Mass. Rep. xii. 501.

If the person taxed be unable to pay from poverty, and the assessors from that cause abate his tax, he will not gain a settlement.—Mass. Rep. v. 430.

The payment of a highway tax for five years, coupled with the prescribed term of residence, gives a settlement.—Mass. Rep. xvi. 236.

The class of cases that present the greatest perplexity are those that arise from the particular provisions of the special acts incorporating new towns. As these are varied in the different Acts, the limits of this work will not admit even of a summary of them. And as but few of the principles determined in those cases are of general interest, the omission will be no loss only to those towns that are particularly interested, and they can easily refer to the different cases in the Reports.

SCHOOLS.

1. *Duty of towns in supporting Schools.*

Every town containing fifty families or householders, shall be provided with a teacher or teachers of good morals to instruct children in orthography, reading, writing, English grammar, geography, arithmetic and good behaviour, for such term of time as shall be equivalent to six months for one school in each year : and every town containing one hundred families, shall be provided with such teachers, for such term as shall be equivalent to twelve months, for one school in each year ; and if one hundred and fifty families, said town shall be provided with such teachers, for a term equivalent to eighteen months, for one school in one year.—And every city, town or district, containing five hundred families, shall be provided with such teachers, for such term, as shall be equivalent to twenty-four months for one school, in a year, and shall also be provided with a master of good morals competent to instruct in the branches aforesaid, and likewise, the history of the United States, book keeping by single entry, Geometry, Surveying and Algebra ; and shall employ such master, to instruct a school for the benefit of all the inhabitants of the town, at least ten months in each year exclusive of vacations, in such convenient place or places, as the inhabitants, at their meeting in March or April may determine ; and every city or town, containing 4000 inhabitants, such master shall be competent to instruct in addition to the foregoing branches the Latin and Greek Languages, history, rhetoric and logick.

A Grammar School must be for the benefit of the whole town ; and if for the accommodation of a particular district is not a compliance with the statute.—*Mass. Rep.* xvi. 141.

The Master must not only be *qualified* to keep such a School, but he must be specially engaged for that purpose, and the School must be regulated by the statute.—*Ibid.*

No person can be lawfully employed to keep a town School, unless he furnish the certificates prescribed by the Act. Notwithstanding the Master be properly qualified to keep such School, yet this evidence cannot be supplied in

any other manner than by the prescribed certificate.—*Mass. Rep. xvi. 141.*

II. *Instructors are to teach the children and youth under their care the tendency of certain virtues, in preserving a free Government.*

It shall be, and it is made the duty of the President, Professors and Tutors of the University at *Cambridge*, and of the several Colleges in this Commonwealth, Preceptors and Teachers of Academies, and all other instructors of youth, to take diligent care, and to exert their best endeavours, to impress on the minds of children and youth committed to their care and instruction, the principles of piety, justice, and a sacred regard to truth, love to their country, humanity and universal benevolence, sobriety, industry and frugality, chastity, moderation and temperance and those other virtues which are the ornament of human society, and the basis upon which the republican Constitution is structured. And it shall be the duty of such instructors, to endeavour to lead those under their care (as their ages and capacities will admit) into a particular understanding of the tendency of the before-mentioned virtues to preserve and perfect a republican Constitution, and to secure the blessings of liberty, as well as to promote their future happiness; and the tendency of the opposite vices to slavery and ruin.

III. *Power of towns to raise money for the support of Schools.*

The several towns are authorized, empowered and directed, at their annual meetings, for the choice of town officers, or at any regular meeting called for that purpose, to vote and raise such sums of money as they shall judge necessary, for the support of schools, to be assessed and collected after the manner of other town taxes.

IV. *Of School Committees.*

1. *How chosen.*

At the annual meeting of every town, they shall choose by written or printed ballots, a school committee, con-

ting of three, five or seven persons, who shall have the general charge and superintendence of all the schools supported at the expense of the town. Towns containing more than 4000 inhabitants, may choose an additional member, not exceeding five.

2. Duties of School Committee, in examining Instructors.

They shall obtain full and satisfactory evidence of the good moral character, of all instructors, who may be employed, in the several town schools, and to satisfy themselves, by personal examination or otherwise, of their literary qualifications, and capacity for the government of schools.

To give certificates to teachers, and to regulate the High School.

They shall furnish the instructors with certificates of their qualifications, and without such certificate, the teacher shall not be entitled to any compensation, for his services.

They shall determine the number and qualifications of the scholars, to be admitted, into the school kept for the use of the whole town.

4. To visit the Schools.

The High school, shall be visited quarterly at least, and a careful examination thereof shall be made, and it shall be then taken that all the scholars are supplied with books.

They shall likewise inquire into the regulation and discipline of the schools and the habits and proficiency of the scholars and the Committee or some one or more of them, shall visit each of the district schools, in the town for the purposes aforesaid, on some day during the first or second week, of the commencement thereof, and also on some day during the two last weeks of the same, and also all the schools kept by the town for similar purposes without giving previous notice, to the instructors.

5. To determine the class books, and cause them to be procured.

The School committee, shall determine and direct what books shall be used, in the respective classes, in all the schools of the town; which books shall be provided, by

the parent, master or guardian of the scholar, if of sufficient ability for that purpose.

A supply of such books, shall be provided by the committee, at the expense of the town and they shall give notice of the place or places where said books may be obtained, and the scholars shall be furnished, at such prices, as merely to reimburse the town, the expenses thereof. The committee shall likewise provide books at the expense of the town, to such scholars as shall not be provided by their parents, masters or guardians, notice of which shall be given by the committee in writing, to the assessors of the town, stating the names of the books, with their prices, and the names of the scholars supplied, with the names of the parents, masters or guardians, who ought to have supplied the same, that the assessors may add the amount to the town tax of the delinquent parent, master or guardian, unless in the opinion of the assessors, said parents, masters or guardians, are not of sufficient ability to supply their scholars with such books, in which case, they may omit to tax them for the same either in whole or in part.

No books are to be ordered by the committee, which are calculated to favour [*to oppose*] any particular religious sect or tenet.

6. Committee to report to the Secretary of the Commonwealth, the state of the schools.

The several school committees are required on the first Monday of June annually, to report to the Secretary of the Commonwealth, the amount of money paid by their city or town, during the year ending on the first day of May preceding, for the instruction of schools:—the number of school districts into which their city or town is divided: the aggregate number of months that the several schools were kept:—what portion by male or female teachers: the whole number of pupils that attended through the year: the number of academies and private schools: the number of pupils in academies and private schools, who have not attended the town schools through the year: the estimated amount paid to the instructors of such academies or schools, and whether there are any or

what number of persons between 14 and 21 years of age, unable to read and write.

It is moreover made the duty of the Secretary to furnish the Committees of each town,* annually with a blank form, for these returns.

It is the imperative duty of all ministers of the gospel, selectmen and school committees, to use their best endeavours, and exercise their influence, that all the children and youth of their respective towns, do regularly attend the schools, established and supported for their instruction.—Stat. 1826. ch. 143. sect. 3.

V. *Of School Districts.*

1. How created.

The several towns are authorized and empowered in town meetings to be called for that purpose to determine and define the limits of school districts within their respective towns, but towns are not obliged to create such districts if they choose to support schools otherwise.

Towns have power to alter the limits of any of the school districts, by subdivision or otherwise, without changing the limits of all the other districts.—*Mass. Rep.* iv. 534.

But towns have no power to alter the limits of a school district, so far as to destroy the corporation, without its consent, nor so as to annul or impair any contract made with such corporation.—5 *Pick. Rep.* 323.

2. Of the powers of School districts, and of the nature of such corporations.

School Districts are corporate bodies, with limited powers, as are all our municipal corporations. And are on the same footing, in regard to the purposes of their creation.—5 *Pick.* 334.

They can bring and maintain suits on contracts made with them, or for any damage done to their property, and are liable to be sued for the non-performance of any of their agreements. They have no power to take and hold any estate real or personal, which has been or may be given, by any person or persons, for the purpose

* Stat. 1826, c. 143. sect. 2 & 10.

of supporting schools in the district, and to apply the same to said purposes, and they may prosecute or defend any action respecting said property. Members of school districts are competent witnesses, and their depositions may be used in any such actions, in the same manner as inhabitants of towns.—Stat. 1826. ch. 143. Sect. 17.

They have power at any legal meeting, to raise money, for erecting or repairing a school house, or to purchase or hire a house, for that purpose, to purchase land for the accommodation of such school house, to determine in what part of the district, said house shall stand, to choose a committee to superintend the building, repairing or purchasing a school house and to procure necessary utensils for the said school houses:—To choose a clerk, who shall be sworn faithfully to discharge the duties of his office, and whose duty it shall be to make a fair record of all votes passed at any meeting, and to certify the same when required, who shall hold his office until another person shall be chosen and sworn in his stead.

At any regular meeting of the district, warned according to law, having an article in the warrant of the selectmen of the town for that purpose, they shall have power to prescribe the mode of warning future meetings. And such mode shall be legal, until altered at some subsequent meeting of the district. And any vote to raise money for any of the purposes aforesaid, passed by a majority of the inhabitants present at a district meeting warned and held as aforesaid, shall be obligatory upon the inhabitants.—Stat. 1826. ch. 143. § 14.

And by Stat. 1832, ch. 161, it is provided that any school district may prescribe by what person or persons, and in what manner, such meetings shall be called, as well as to prescribe the mode of warning the same.

3. Of the manner of calling their *first meeting*.

After the town is divided into school districts, the selectmen, upon application in writing of three or more freeholders, inhabitants of any district; and if a district does not contain so many freeholders, then upon application of any three of the inhabitants who pay taxes in such

district, they shall issue their warrant to one of the applicants, requiring him to warn the qualified voters of such district, to meet at a time and place named in the warrant, by notifying personally every person in the district qualified to vote in town affairs, or by leaving at his place of abode, a written or printed notification, expressing the time, place and purposes of the meeting, seven days at least before the time appointed for the same.

VI. *Of the prudential committee of the district.*

1. How chosen.

When the town shall first determine the expediency, the several school districts shall annually choose in such manner as they may decide, one person to be a prudential committee man for such district ; otherwise such person shall be chosen by the town at their annual meeting.

2. Of his qualifications and powers.

He shall be resident within the district, and shall keep the school house in good order, or provide a suitable place for the school, at the expense of the district: he shall provide fuel and all things necessary for the comfort of the scholars therein ; he shall select and contract with a school teacher, for his district, and shall give such information and assistance to the school committee as may be necessary to aid them in the discharge of their duties.

VII. *Of assessing taxes for School Districts.*

For the purpose of raising money for purchasing a lot ; building, repairing, providing, or hiring a school house, and for furnishing the same with necessary utensils, every person shall be taxed in the district where he lives for all the estate he holds in town, under his own actual improvement, and the residue of his real estate shall be taxed in the district in which it is included. Non-resident lands shall be taxed in such district as the assessors shall appoint. Before the assessors levy any school district tax, they shall determine in which district said lands shall be assessed, and certify the same to the town clerk, who shall record the same ; and such land shall

continue to be taxed in such district, until the town is districted anew, so long as it remains non-resident land.— But all the lands belonging to any such proprietor, shall be taxed in the same district. The taxes are to be assessed on the polls and estates of all the inhabitants of the district, and upon the non-resident owners of land before named, in the same manner as town taxes are assessed, in thirty days after the Clerk of the district shall have certified to the assessors, the sum voted by the district.— Stat. 1826, ch. 143, sect. 11.

It is not necessary to notify the inhabitants to bring in lists of their polls and estates, nor for the assessors to make a new valuation, but the taxes may be made in reference to the town taxes for the same year.— *Waldron vs. Lee*, 5 Pick. 323.

The assessors are to commit the taxes, with a warrant in due form of law, to one of the town collectors, directing him to pay the same to the town treasurer, within a time limited in the warrant; and the assessors are to certify the same to the treasurer. The town officers have the same powers and duties, as they have for levying and collecting a town tax; and are entitled to the same compensation. Assessors have power to make abatements.— Stat. 1826, ch. 143.

The town officers are bound by the certificate of the District Clerk, that the money was duly voted; and they are not to inquire into the regularity of the proceedings of the District.—5 Pick. 323.—14 M. R. 315.

VIII. *Moderator.*

At a meeting of a school district, in the absence of a justice of the peace, the moderator may administer an oath to the person who shall be chosen clerk.—Stat. 1833, ch. 74.

IX. *Proceedings in case the district do not agree.*

If the district does not agree where to place their school house, the selectmen, upon application of the building committee, may determine the spot. If a majority refuse to vote money, for any of the purposes required of a district, application may be made to the se-

lectmen, by any five of the freeholders of the district, and if there be not so many, than by five of the voters, requesting them, to insert in their warrant for calling the next town meeting, an article, requiring the opinion of the town, upon the expediency of making the appropriation, and if the town think it is expedient to raise the money, the same shall be assessed and collected in the same manner, as if it had been voted by the district.—Stat. 1826. ch. 143. sect. 16.

If after a tax has been assessed, part of the district should be set off to another district, they will still be held liable, to pay the tax, the debt being fixed by the assessment.—5 *Pick.* 323.

X. Penalties for a neglect to support schools.

Any town which shall refuse or neglect at their annual meeting for the choice of town officers, to vote and raise money for the support of the schools provided for by law, and to choose a school committee to superintend the schools, or, if said town is divided into districts, prudential committees for said districts; shall forfeit and pay, for neglecting to vote money as aforesaid, double the highest sum, that said town has ever appropriated to the support of schools; and for neglecting to choose either of said committees, they shall forfeit, not less than \$100, nor more than \$200, to be recovered by information or indictment, in any proper court. Said fines to be paid into the county treasury one fourth part to the use of the county, and the residue to be paid to the school committee of the town, if there be such committee, and if not, to the selectmen of said town, for the support of schools therein; and the said committee or selectmen, shall forthwith receive, apportion and appropriate the money, in the same manner, as if it had been regularly raised.—Stat. 1826. ch. 143. sect. 19.

Towns which contain more than 500 families, may dispense with the High School, as is provided for on page 153, provided, they raise a sum of money to be divided among all the School Districts in town, which shall not be less than the highest sum raised by such town, within four years last past.—Stat. of March 3, 1829.

SELECTMEN.

I. *Of their choice and qualifications.*

At the annual town-meeting in *March* or *April*, there shall be chosen, three, five, seven, or nine able and discreet persons of good conversation, inhabiting in the town, to be selectmen or townsmen.—Stat. 1785, Ch. 75. § 2.

They are also to be Overseers of the Poor, where other persons are not particularly chosen for that purpose.

They are also to be Assessors, if the town neglects to choose those officers, or if so many of them chosen shall refuse to accept, as that there shall not be the number of assessors voted by the town : in this case,* they are to be sworn to the discharge of this trust, otherwise no oath is required of these officers, excepting faithfully and impartially to discharge the duties of their office, respecting all elections and the returns thereof.—Stat. 1833. Ch. 141.

II. *Of their duties respecting Elections.*

1. As to the posting up lists of Voters, and of the effect of such lists.

Under the title of COLLECTORS, xxiii. page 81, it will be seen that it is the duty of those officers to furnish the Selectmen, fifteen days before the first Monday of March, with a list of such persons from whom they have received a State or county tax within the year next preceding, specifying the time of payment. And the Selectmen shall, at least ten days before the first Monday in March, and ten days before the second Monday in November, annually, meet together, and make out alphabetical lists of all the persons qualified to vote for any officers ; and they shall, at least ten before the first Monday in March, and ten days before the second Monday in November, annually, cause such lists to be posted up, at two or more public places in their respective towns. And they shall be in session for a reasonable length of time, within forty-eight hours next preceding all town-meetings, for the choice of any officers, for the purpose of correcting the

* Stat. 1785, ch. 50. § 2.

aforesaid list of voters ; and such session shall be holden, for one hour at least, on the day of such meeting, and before the opening of the same ; and of the time and place of their meeting for this purpose, they shall give notice on the lists posted up as aforesaid. And it shall be the duty of the Selectmen or Moderator to be provided with a complete list as aforesaid, at such election, and no person shall vote at any election, whose name shall not have been previously placed on said list, nor until the Selectmen or Moderator presiding at such meeting shall have opportunity to find his name on the list aforesaid.—Stat. 1822, ch. 104. § 2. Stat. 1833. ch. 102. § 2.

The selectmen of any town, in case they shall have duly entered on the list of voters the names of all such persons as are returned to them by the collectors, as having paid any tax within two years, shall not be held answerable for any omission on said list, or for refusing the vote of any person, whose name is not on the list, unless the said person, whose name may be omitted, shall, before offering his vote, furnish the Selectmen with sufficient evidence of his having the legal qualifications of a voter at said meeting, and request of the Selectmen the insertion of his name on the list of voters.—Stat. 1822, ch. 104. § 2. & 4.

See further upon this subject under title VOTERS.

2. Of meetings for the choice of Governor, &c.

The Constitution provides that the meeting for the choice of Governor, Lieutenant Governor Senators and Representatives, shall be held on the second Monday of November in every year, but meetings may be adjourned, if necessary, for the choice of Representatives, to the next day, and again to the next succeeding day, but no further. But in case a second meeting shall be necessary for the choice of Representatives, such meetings shall be held on the fourth Monday of the same month of November.

3. Of their duties in town meetings on certain elections.

It shall be the duty of the selectmen, and the clerks of the several towns and districts to make and seal up a separate list of the persons voted for as Governor, Lie-

tenant Governor, Counsellors and Senators and Representatives in the Congress of the United States, and transmit the same to the Secretary of the Commonwealth, or to the sheriffs of their respective counties. And when the said lists shall be received at the office of said secretary, the seals thereof shall not be broken, but the same shall be kept as they are received, until delivered by him to the two branches of the general court, or to the executive authority, according to the constitution and laws of the Commonwealth.

4. Selectmen required to take an oath.

The selectmen are required, before they enter upon the execution of their official duties, to take an oath or affirmation before a Justice of the Peace, or the clerk of the town or district of which they are the selectmen, faithfully and impartially to discharge those duties respecting all elections, and the returns thereof, and that a certificate of such oath or affirmation shall be recorded in the town or district records.—Stat. 1833. ch. 141.

5. Of their duty in the choice of Representatives.

The inhabitants of every corporate town having a right to choose a representative or representatives in the legislature of this Commonwealth, shall be convened for that purpose annually on the second Monday in November, by the Selectmen of such town or the major part of them. And it shall be the duty of such Selectmen, to summon and notify such meeting in the manner there legally established for calling other town meetings; and the Selectmen present shall preside in such meeting, and shall regulate the same, and shall openly receive, sort, and count the written votes which shall there be given by the inhabitants present, qualified to vote for representatives; and shall forthwith publicly declare who is or are the person or persons elected; and shall cause the election to be recorded in the town records, together with the whole number of votes given in, and for whom they were given; and shall cause the person or persons so elected to be notified thereof, by a constable of the town, or any other person specially authorized for that purpose by the Selectmen, within three days next afterwards; and

the Selectmen present, or the major part of them, shall make and sign a certificate and return of such election, and shall cause the same to be delivered into the office of the Secretary of the Commonwealth, on or before the first Wednesday of January the next; or such election shall be certified to the House of Representatives to their acceptance; and such certificate may be in the form following, *viz.*

COMMONWEALTH OF MASSACHUSETTS.

County of . Pursuant to a law of this Commonwealth, the freeholders and other inhabitants of the town of , qualified according to the Constitution, having been duly convened in town-meeting, on the day of November, current for the choice of Representatives in the Legislature of this Commonwealth, did then and there elect A. B. being an inhabitant of said town, to represent them in the General Court, to be convened and holden on the first Wednesday of January next. Dated at , the day of , in the year of our Lord, , and in the year of the Independence of the United States,

Selectmen of
The person chosen as aforesaid, was notified thereof and summoned to attend, by me,

Constable of

And where the Selectmen of any town, entitled to choose a representative as aforesaid, shall neglect to notify a meeting, or to preside or proceed therein as by this Act is required; and where any town-clerk shall refuse or neglect his duty therein, to the prejudice of the rights of the electors, each and every Selectman and the town-clerk offending therein, shall respectively forfeit a sum not exceeding *eighty dollars*, nor less than *forty dollars*, according to the aggravation of the offence, upon conviction thereof.

6. Of their duty in the choice of Representatives to Congress.

The Commonwealth is divided into twelve districts for the purpose of choosing Representatives to Congress, in each of which districts one Representative, being an in-

habitant thereof, shall be elected.—Stat. 1833. ch. 68.
§ 1.

The Selectmen of the several towns, shall cause the inhabitants to assemble on the second Monday of November biennially, to give in their votes for their respective Representatives; and at such meetings, the Selectmen shall preside, and shall, in open town-meeting, receive, sort and count the votes, and shall form a list of the names of the persons voted for, with the number of votes for each person written in words at length, against his name; and the town-clerk shall make a record thereof, and the selectmen shall in such meeting make public declaration of the persons voted for, and of the number of votes they respectively have, and shall in open town-meeting seal up the said list certified by the Selectmen, and express upon the outside of the said list the district in which the votes were given, and shall transmit the same within three days after the day of such election, to the sheriff of the county in which such town or district lies; and the said sheriff shall transmit the same to the secretary of the Commonwealth within seven days thereafter, or the said selectmen may transmit the same to the secretary of the Commonwealth within ten days after the day of said election. And in the event there shall be no sheriff in the county, the Selectmen shall return such list to the secretary's office within the same term of time as sheriffs are required to do.—Stat. 1833, ch. 68.
§ 3.

In case no person shall be chosen by a majority of all the votes returned from any district, the Governor shall cause precepts to issue to the Selectmen of the several towns within such district, directing and requiring such Selectmen to cause the inhabitants of their respective towns qualified as aforesaid, to assemble as aforesaid on a day in such precept to be appointed, to give their votes for a Representative in Congress aforesaid; which precept shall be accompanied with a list of persons voted for in such districts as shall have received fifty votes, showing the number of votes for each person according to the first return; and the same returns made in all respects as before directed; and like proceedings shall be had as often as occasion may require.

Whenever any vacancy shall happen in the representation of this Commonwealth in the Congress of the United States, the Governor shall cause precepts to issue to the Selectmen of the several towns, within any district in which such vacancy may happen, directing and requiring them to cause the inhabitants of their respective towns to assemble on a day in such precept to be appointed, to give in their votes for a Representative to supply such vacancy; and like proceedings in all respects shall be had, from time to time, as are herein before provided.—Stat. 1833. ch. 68. § 5.

And if any Selectman shall neglect to perform any of the duties which by this Act they are required to perform, each officer so neglecting shall forfeit and pay a sum not exceeding *two hundred dollars*, nor less than *thirty dollars*, for any such neglect.—Stat. 1833. ch. 68. § 7.

5. General duties in Elections.

Any Selectman, presiding at any town-meeting, who shall permit any one to read or examine the ballot of any voter, with a view to ascertain the name of the candidate voted for, without the consent of such voter, shall forfeit *twenty dollars*.*

Any person knowing himself not qualified to vote for Governor, &c. and town officers, who shall wilfully give in, or attempt to give in a vote or ballot for any of the same, then voted for, at any such meeting, shall forfeit a sum not exceeding *fifty dollars*; and any person who shall wilfully aid and abet any person in voting, or attempting to vote, as aforesaid, shall forfeit a sum not exceeding *thirty dollars*.

No person shall vote until the presiding officer has time to inquire and check his name on the list. Any person offending or giving a false answer or name, shall forfeit a sum not exceeding *thirty dollars*.—Stat. 1813. ch. 68. § 53.

Whenever a meeting is holden in any town, for the purpose of choosing persons for Counsellors and Senators, the Selectmen presiding at such meeting, be and hereby are

* Stat. 1809, ch. 2. § 3.

directed to call on the voters in such meeting, qualified for choosing such officers, requiring each of them to give in their votes on one list for as many different persons as are then to be chosen to the same office. Stat. 1801.

The Selectmen of any town who shall neglect to call meetings of the inhabitants and others privileged there to vote for the election of Governor, Lieutenant-Governor, Counsellors, and Senators, and to give due warning of the time and place of such meeting as required by the Constitution of this Commonwealth, or who shall refuse or neglect to preside in any such meetings, or to receive the votes of the qualified electors present, or who shall neglect to ascertain, declare and certify the number of votes, or who shall wilfully make any false declaration or certificate thereof, to the prejudice of the rights of the electors, shall forfeit a sum not exceeding *eighty dollars* nor less than *forty dollars*, to be recovered from each Selectman or assessor who shall offend in the premises, according to the aggravation of each offence. And every town-clerk, present at any such meeting, who shall neglect or refuse to make due and seasonable return thereof to the sheriff of the county, or into the Secretary's office, as required by the Constitution of this Commonwealth, shall forfeit a sum not exceeding *eighty dollars*, nor less than *forty dollars*, for each offence,

III. *Of their duty as it respects the licensing of Innholders and Retailers.*

Sec. 1. No person shall presume to be an Innholder or seller of wine, brandy, rum, or any other spirituous liquors to be used and consumed in or about his or her premises, except such person be first duly licensed according to law, as is herein provided, on pain of forfeiting the sum of one hundred dollars; and if any person shall at any time sell any spirituous liquors, or any mixed liquors, part of which is spirituous to be used or drank in or about his or her premises, without license therefor duly had or obtained according to law, he or she shall forfeit and pay for each offence, a sum not exceeding twenty dollars, nor less than ten dollars.

Sec. 2. No person shall presume to be a retailer, or

seller of wine, brandy, rum, gin, whiskey or other distilled spirits, in a less quantity than ten gallons, and that delivered and carried away all at one time, except such person be first duly licensed according to law, as is herein provided, on pain of forfeiting the sum of twenty dollars for each offence ; and no person licensed to be a retailer as aforesaid, shall presume to sell any of the above liquors, either mixed or unmixed, to be drank in his or her house or shop, or in any of the parts or dependencies of the same, under the pain of forfeiting therefor the sum of twenty dollars.

Sec. 3. No person shall presume to be a common victualler, or seller of wine, brandy, rum, or any other spirituous liquors, to be used and consumed in or about his or her premises, except such person be first duly licensed according to law, as is herein provided, on pain of forfeiting the sum of one hundred dollars ; and if any person shall at any time sell any spirituous liquors, to be used or drank in or about his or her premises, without license therefor duly had and obtained according to law, he or she shall forfeit and pay, for each offence, a sum not exceeding twenty dollars, nor less than ten dollars.

Sec. 4. The Mayor and Aldermen of the City of Boston, may license for said city as many applicants therein as common victuallers, as they shall decide the public good may require, and to remove all doubt of the nature of the occupation of the common victualler provided to be licensed in this act, it is hereby provided that all the liabilities, privileges and requirements of this act, which apply to innholders, shall apply to common victuallers, excepting that they shall not be required to furnish lodging for travellers, hay and provender for horses and cattle.

Sec. 5. If any person licensed as a common victualler, as described in the preceding section of this act, shall keep open his or her house, cellar, shop, store, or place of business, on any part of the Lord's day or evening, or keep open the same at a later hour than ten of the clock of the evening of any working day, and entertain any person therein by selling him or her any spirituous or strong liquor on the Lord's day or evening, or on any working day at a later hour than ten of the clock in the

evening thereof, he or she so offending shall forfeit and pay for each offence, on conviction thereof, the sum of ten dollars.

Sec. 6. The Mayor and Aldermen of the City of Boston may license for said city of Boston; and the County Commissioners in the several counties in this Commonwealth, may license for the towns and districts in their respective counties, as many applicants therein as innholders or retailers as they shall decide the public good may require: and in all licences to be granted either to innholders, common victuallers or retailers within the city of Boston, or in the towns or districts in this Commonwealth, the street, lane, alley or other place, and the number of the building, or some other particular description thereof, within said city, town or district, shall be specified, where such licensed person shall carry on and exercise his or her respective employment, and said license shall not protect such person from the liabilities provided in this act, for carrying on and exercising his or her employment in any other place than in that specified in said license.

Sec. 7. All licenses to innholders, retailers and common victuallers, shall be yearly granted or renewed, and the time for which all such licenses shall be granted or renewed shall expire on the first day of April in each year, but it shall be in the power of the Mayor and Aldermen of the City of Boston, and the County Commissioners in their several counties, to grant or renew licenses at any time after the said first day of April, for the remainder of the year, whenever they shall deem the same expedient. And each person who shall be licensed as aforesaid, shall pay to the clerk of the city of Boston, or to the clerk of the County Commissioners of their respective counties, the sum of one dollar, which shall be paid by said clerks to the treasurers of their respective counties, for the use and benefit of said counties.

Sec. 8. The Mayor and Aldermen of the city of Boston, may license for the city of Boston, and the County Commissioners in the several counties may license for the towns and districts in their respective counties, in the manner before provided, as many persons therein as they shall decide the public good shall require as innholders,

common victuallers, or retailers or sellers of wine, beer, ale, cider, or any other fermented liquor, and no excise or fee shall be required therefor.

Sec. 9. The Clerk of the County Commissioners in the several counties shall from time to time annually, before granting the said licenses seasonably transmit to the selectmen of every town or district within the county, a list of the names of the persons in such town or district, who were licensed as innholders, or retailers or common victuallers, the year before. And no license shall be granted or renewed to any person unless he or she shall produce a certificate from the selectmen of the town or district where such license is intended to be exercised, or from a majority of them in form following, to wit: We, the subscribers, a majority of the selectmen of the towns (or district of)

do hereby certify that
has applied to us to be recommended as (here expressing the employment, and a particular description of the place for which the license is sought) in the town (or district) of and that, after mature consideration, we are of opinion, that the public convenience requires, that the petition of said be granted, he or she being, to the best of our knowledge and belief, a person of good moral character.

(Signed) A B }
C D } *Selectmen of*
E F }

Provided, however, that any person aggrieved by the neglect or refusal of the Selectmen of any town or district within any county within this commonwealth to return the certificate, as has been herein prescribed, in order that his or her license as an inn-holder, retailer or common victualler may be renewed, or by their refusing to give their approbation, that such person may be originally licensed to be an innholder, retailer or common victualler, within such town or district, it shall and may be lawful for the County Commissioners within said county, on application of such aggrieved person to renew or originally grant the license prayed for, any law, custom or usage to the contrary notwithstanding: provided always, that the person applying shall substantially prove

to the satisfaction of the said Commissioners, that the Selectmen have unreasonably neglected or refused to give their certificate or approbation, as is herein prescribed, and that the public convenience requires the renewal or originally granting the license prayed for; and that it shall be the duty of such aggrieved person to inform the Selectmen or some one of them, refusing as aforesaid, that he or she shall apply to the County Commissioners at their session next to be holden within said county, for the renewal or granting of his license, so that the Selectmen may, if they see fit, appear and shew cause why such person should not be licensed.

Sec. 10. Every licensed innholder shall at all times be furnished with suitable provisions and lodging for the refreshment and entertainment of strangers and travellers, stable room, hay and provender for their horses and cattle, on pain of being deprived of his or her license. And every licensed innholder and common victualler shall, at all times, have a board or sign affixed to his or her house, shop, cellar or store, or in some conspicuous place near the same, with his or her name at large thereon, and the employment for which he or she is licensed, under pain of forfeiting the sum of twenty dollars; and if any innholder enjoined by this act to be suitably provided to receive and entertain strangers, travellers, or others, as occasion may require, shall be convicted of refusing to make suitable provision when desired, for receiving of strangers, travellers, and their horses and cattle, such person upon conviction thereof, in the Court of Common Pleas in the county to which such licensed person belongs, shall, by the said court, be deprived of his or her license: and the said court shall in such case order the sheriff of the same county or his deputy, to cause the sign of such convicted person to be taken down, whose duty it shall be to perform the same without delay.

Sec. 11. No innholder, and no common victualler, shall have or keep in or about his or her house, shop, cellar or store, yards, gardens or dependencies, any dice, cards, bowls, billiards, quoits, or any other implements used in gaming; nor suffer any person or persons resorting unto his or her house or other place of business

to use or exercise any of said games, or any other unlawful game or sport within his or her house or place of business, or any of the dependencies as aforesaid, or places to them belonging, on pain of forfeiting the sum of ten dollars for every such offence. And every person convicted of using and exercising any of the games as aforesaid in any such house, place of business, or dependencies thereof, shall forfeit the sum of ten dollars.

Sec. 12. No innholder, and no common victualler, shall suffer any person to drink to drunkenness or excess in his or her house or place of business, or suffer any minor, (travellers excepted) or servant, to drink there, or to have any strong drink there after having been forbidden by their respective parents, guardians or masters, on pain of forfeiting five dollars for each offence.

Sec. 13. If any innholder or any common victualler shall trust or give credit from time to time to any person for liquor to be drank and used in his or her premises, such innholder or common victualler shall lose and forfeit all such sums so trusted and credited; and all actions hereafter brought for such debt or debts shall be utterly excluded and barred. And the defendant in such action may plead the matter especially, or under the general issue give the matter in evidence, any law, usage or custom to the contrary notwithstanding.

Sec. 14. Whenever any person shall by idleness or by excessive drinking of spirituous liquors, so misspend, waste, or lessen his or her estate, as thereby either to expose himself or herself, his or her family, to want or indigent circumstances, or the city, town or district to which he or she belongs, to a charge or expense for the maintenance of him or her, or his or her family, or shall so habitually indulge himself or herself in the use of spirituous liquors, as thereby to greatly injure his or her health, or endanger the loss thereof, the City Clerk under the direction of the Mayor and Aldermen of the City of Boston, and the Selectmen of the towns or districts as aforesaid, shall in writing under their hands, forbid all licensed innholders, retailers and common victuallers to sell to any of the persons aforesaid, any spirituous or strong liquors in this Act mentioned or referred to, for the space of one year, and shall in like manner forbid the licensed persons,

as aforesaid of the city of Boston, or of any town or district to which such persons may resort for the same: and said Mayor and Aldermen, and said Selectmen, shall in the same manner, from year to year, renew the prohibition as to all such persons as have not in their opinion reformed within the year; and if any licensed innholder, common victualler or retailer, shall during any such prohibition, sell to any such prohibited person, any spirituous liquor in this act mentioned or referred to, he or she shall forfeit and pay for each offence, the sum of twenty dollars, and whenever the authorities aforesaid, agreeably to the provisions of this act have prohibited the sale of any strong liquor to any mis-spender of time or estate as aforesaid, if any person shall, with a knowledge of said prohibition, give, sell, purchase or procure for, and in behalf of such prohibited person, or for his or her use, any spirituous or strong liquors as aforesaid, he shall forfeit and pay the sum of twenty dollars for each offence.

Sec. 15. All fines, forfeitures, and penalties created by this Act, may be sued for and recovered in an action of debt, or of the case, in any court of competent jurisdiction to try the same, by any person who will prosecute therefor, in which case the penalty, fine or forfeiture shall enure, one moiety thereof to the county where the offence was committed, and the other moiety to the person prosecuting for the same; or the same may be prosecuted for and recovered by indictment in any court of competent jurisdiction, in which case the whole of the fines, forfeitures and penalties shall enure to the county where the offence was committed;—and in all cases arising under this Act in the city of Boston, (excepting where the fine, forfeiture or penalty exceeds twenty dollars,) the Police Court shall be held to be a court of competent jurisdiction; and the prosecutions in said court shall be by complaint or information, subject to the right of appeal to the Municipal Court; but the Police Court shall not have power under this Act to sentence to imprisonment. *Provided*, That in all cases where a person shall be convicted of a breach of this act, and is unable to pay the penalty, fine or forfeiture, or fails to do it, he may be imprisoned in the jail of the county

where the offence was committed, for a term of time not more than ninety days, at the discretion of the court before whom trial has been had. *Provided further*, That any licensed person described in this Act, being twice convicted of any breach of it, shall thereupon, in addition to the penalties herein before provided, be liable to a further punishment of not more than ninety day's imprisonment in the jail of the county within which the offence was committed, at the discretion of the court before whom trial may be had.

Sec. 16. The act for the due regulation of licensed houses, passed on the twenty-eighth day of February, one thousand seven hundred and eighty-seven, and the several acts in addition thereto, and all former laws on the same subject, be and the same are hereby repealed. *Provided however*, That nothing herein contained shall affect any suit, indictment, or other legal proceedings now commenced or pending, or that shall be hereafter commenced for any breach of the laws which are by this section repealed, nor the rights of any person now licensed, for the remainder of the term for which they are licensed.

24th March, 1832.

VII. *Of the duty of Selectmen, as it respects Idiots, Lunatics, and Distracted Persons.*

It shall be in the power of the Judges for the probate of Wills, within their respective counties, from time to time, (upon request made by the friends or relations of any idiot, *non compos*, or lunatic person, or by the overseers of the poor in such town where such idiot, *non compos*, or lunatic person lives or is an inhabitant) to direct the Selectmen of such town to make inquisition thereinto; and if the person said to be an idiot, lunatic, or distracted person, shall be adjudged by the Selectmen of the town (or the major part of them) where such person resides, to be incapable to take care of him or herself, and they shall certify the same under their hands, to the Judge, the said Judge of Probate shall be empowered to assign some suitable person or persons to be guardian or guardi-

ans to such idiot, lunatic, *non compos*, or distracted person, directing and empowering such guardian or guardians to take care of the person and estate, both real and personal, of such person, and to make a true and perfect inventory of the said estate, to be returned into and filed in the Probate office in such county.*

VIII. *Of their power and duty as it respects such persons as lessen and waste their estates by excessive drinking, gaming, idleness and debauchery.*

Whereas, to the dishonour of human nature and the great injury of society, individuals oftentimes spend, lessen and waste their estates by excessive drinking, gaming, idleness, and debauchery, and thereby involve themselves and families in distress, misery and ruin, and subject the towns to which they belong to expense and charge for their maintenance and support :

When any person by excessive drinking, gaming, idleness or debauchery of any kind, shall so spend, waste or lessen his or her estate, as thereby to expose himself or herself, or his or her family, or any of them, to want or suffering circumstances, or shall by thus spending, wasting, or lessening his or her estate, endanger or expose the town to which he or she belongs, in the judgment of the Selectmen thereof, to a charge or expense for the maintenance or support of him or her, or his or her family, or any of them, such Selectmen, or the major part of them, shall, in such case, lodge a complaint with the Judge of Probate for the county to which the person spending, wasting or lessening his estate as aforesaid, doth belong ; and if it shall appear to the said Judge of Probate that the person complained of comes within the description of this Act, and has had due notice of the complaint exhibited against him or her, as the case may be ; then, and in that case, the said Judge of Probate shall appoint the said Selectmen, or the major part of them, or some suitable and discreet person or persons, guardian or guardians to such person. And no sale or bargain of any real or personal estate, made by such per-

* Stat. 1783, ch. 38.

son or persons, after the appointment of guardianship, as aforesaid, shall be held valid in law. And the guardian or guardians that may be thus appointed, shall, in discharging the duties of their appointment, pursue the same method and be under similar obligations for a faithful discharge of their trust, as guardians appointed for idiots and lunatics.*

These guardians have no control over the persons of their wards, nor authority to restrain them of their liberty, or to bind them to service.—*Mass. Rep. v. 427.*

When the Selectmen, or a major part of them apply to the Judge of Probate for a Guardian in the above cases, and the Judge shall order notice to the person complained against ; a copy of the complaint with the order of the Judge annexed, may be filed in the office of the Register of Deeds : and if a guardian shall be appointed, all gifts or sales of the estate of the said spendthrift, made by him after the filing of said complaint and order with the register of deeds shall be null and void. Stat. 1818, ch. 60.

So after the recording of such complaint and order, all contracts for the payment of money, or for the sale of real or personal estate, made by or with the party complained of, shall be null and void. Stat. 1826, ch. 63.

The Judges of Probate are authorized to make a suitable allowance for defending the spendthrift, against the complaint. *Ibid.* sect. 2.

Upon the sale of the real estate of any person under guardianship ; the wife may release her dower, and have the proceeds thereof, secured to her own use. Stat. 1823, ch. 146.

IX. Of their power and duty respecting the binding out Minors.

Minors under the age of fourteen years, may be bound by deed, as servants or apprentices, until that age, by their father ; and in case of his death, by their mother or their lawful guardian : and having neither parent nor guardian, may bind themselves, with the approbation of the Selectmen. And all minors over the age of fourteen, may also

* Stat. 1783.

be bound ; females to the age of eighteen, and males to the age of twenty-one years, in like manner, having the minor's consent expressed in the deed. In every such case there must be two deeds or indentures, one to be kept by each ; and when made by the approbation of the Selectmen, they, after having examined the terms of the contract, shall express their approbation in writing thereon.*

It is made the right and duty of Selectmen, as well as of parents and guardians, to inquire into the usage of minors bound by their consent, and to defend them from cruelties, neglects, or breaches of covenant of their masters or mistresses.

And such parents, guardians or Selectmen may complain to the Court of Common Pleas in the county where such master or mistress dwells, for any cruelty or breach of contract. And if the complaint be supported, the Court may discharge the indentures with costs ; or if not supported, may award costs against the complainants, provided that the Selectmen complained without probable cause.†

So the master or mistress may complain of any servant or apprentice for gross misbehaviour ; and like proceedings shall be had as if the complaint was against the master or mistress.‡ And the Selectmen are also to be notified as in the other case.

It is further provided, that all considerations that shall be allowed by the master or mistress in any contract of service, shall be secured to the sole use of the minor.§

The contract dies with the master or mistress.||

It is of great importance in the binding of apprentices, to pursue this statute, otherwise there are no remedies for any breaches of the contract by application to the Court, for a discharge of the indentures, but the only remedy is by action at common law.—*Day vs. Everett.*—*Mass. Rep. vii. 149.*

X. *As to binding out Poor Children.*

See Overseers of the Poor, page 120.

* Stat 1794, ch. 64.

† *Ibid.*

§ Stat. 1794, ch. 64, § 1.

† Stat. 1794, ch. 64.

|| *Ibid.* § 5.

XI. *To perambulate Town Lines.*

Two or more of the Selectmen of every town, or such other persons as the Selectmen shall, in writing, appoint, shall once in five years run the lines and renew the marks; and their proceedings, after every such renewal of boundaries, shall be recorded in the respective town books. The Selectmen of the most ancient town to give notice, in writing, unto the Selectmen of the adjoining town, of the time and place of meeting for such perambulation, ten days beforehand; and the Selectmen who shall neglect their duty in notifying or attending, either personally or by their substitutes, to perambulate the line, at the time and place assigned as aforesaid, shall severally forfeit and pay *five pounds*; two thirds to the use of the town who shall comply with their duty as aforesaid, and the other third unto any two or more of the Selectmen of the town so complying, who are hereby empowered to inform and sue for in the Court of Common Pleas for the same county, at any time within two years after the forfeiture shall be incurred, and not afterwards.—*Stat. 1785, ch. 75. Stat. 1826, ch. 117.*

Selectmen are required whenever their town lines are run, to cause to be erected at the joint and equal expense of the towns interested, permanent monuments to designate their boundaries at each and every angle thereof, where said lines are not bounded upon the ocean, or some permanent stream of water: the monuments are to be of stone well set in the ground, and standing at least four feet above the surface of the earth, and the first letter of the names of the towns, for which said monuments shall be erected, shall be cut on suitable places thereon. Provided that where there is now a permanent stone monument, two feet in height, the same need not be replaced.—*Stat. 1826, ch. 117.*

Where towns are bounded upon either of the adjacent States, the proper municipal officers of the adjoining towns in such States, shall be invited to perambulate their town lines, and if they accept the proposition, the state lines should be perambulated, in the same manner, as other town lines are, but no boundary or monument es-

established by the authority of the State government shall be removed from the place where it was originally fixed. *Ibid.* sect. 2.

If any selectmen shall neglect or refuse to cause the said monuments to be erected, or to notify the municipal officers of the adjacent towns in the adjoining States, or perambulate with said officers if they consent, they shall be liable to the same penalties as are provided for neglect to perambulate town lines, by the former act, to be recovered and appropriated as is therein provided. *Ibid.* sect. 3.

XII. Duty of Selectmen in erecting and maintaining Guideposts.

It is the duty of the inhabitants of the several towns to provide, erect, and keep in repair such guide-posts upon all public roads, at such places and in such manner as the Selectmen may determine.

The Selectmen of the several towns are authorized and required, from time to time, to fix and determine upon such places at the corners and angles of all roads in the several towns, at which guide-posts shall be erected and kept, as in their judgment shall be found necessary and convenient, and shall cause a fair record thereof to be entered and kept amongst the records of the said towns.

The guide-posts to be erected and kept, shall be constructed in the manner following; that is to say—There shall be erected at the several corners or angles of the roads aforesaid, at such places as shall be ordered by the Selectmen, a substantial post, of not less than eight feet in height; upon the upper end of which shall be placed a board or boards, upon each of which boards shall be plainly and legibly painted the name of the next town with such other noted town or place as may be judged most expedient for the direction of travellers, to which each of the roads may lead, together with the distance or number of miles to the same; and also the figure of a hand, with the fore-finger thereof pointing towards the town or place to which the said roads may lead: *Provided nevertheless*, that the inhabitants of the several towns, may,

if they judge fit, on or before the first Monday of April, annually, agree upon some suitable substitute in the room of said guide-posts, and appoint any proper person or persons to superintend the erecting the same.

If the inhabitants of any of the towns shall neglect or refuse to erect and maintain said guide-posts, in such places and in such manner as is herein provided, the said inhabitants shall forfeit and pay, to the use of the Commonwealth, *twenty shillings* for every month which they shall so neglect or refuse. And if the Selectmen of the several towns shall neglect or refuse to fix and determine upon any places in the towns at which the said guide-posts shall be erected and kept, by the time in this act set and limited, the said selectmen shall forfeit and pay, to the use of the Commonwealth, *twenty shillings* for every month which they shall so neglect or refuse; said penalties and forfeitures to be recovered by indictment of the Grand Jury in the county where the offence may be committed.

If any person shall injure, mar or deface any guide-post, or its substitute, agreed upon as aforesaid, or board which shall be set up, as is in this Act provided, and be convicted thereof before any Justice of the Peace within this Commonwealth, (who is hereby empowered to try the same) such person so convicted shall forfeit a sum, not more than *forty shillings*, nor less than *twenty shillings*; one half to the complainant, and the other half to the use of the town in which such guide-post, or its substitute, so injured, marred or defaced, was set up, and shall pay all costs of prosecution.

XIII. *Of regulating the Jury Box, and of drawing Jurors.*

1. Of preparing the Jury Box.

The Selectmen, in each town, shall provide, and at all times cause to be kept in their respective towns, one jury box, and shall, before the first day of June (1813,) and once at least in every three years afterwards, prepare a list of such persons, under the age of seventy years, in their respective towns, as they shall judge well qualified to serve as Jurors, being persons of good moral character, and qualified as the constitution directs, to vote in the choice of Representatives, excepting the Governor, Lieu-

tenant-Governor, Counsellors, Judges, and Clerks of the Common Law Courts, Secretary and Treasurer of the Commonwealth, Loan Officers, and Revenue Officers, Judges and Registers of Probate, Registers of Deeds, settled Ministers of the Gospel, Officers of any College, Preceptors of incorporated Academies, Physicians and Surgeons regularly authorized, Cashiers of incorporated Banks, Sheriffs and their Deputies, Marshals and their Deputies, Counsellors and Attornies at Law, Justices of the Court of Sessions, Criers of the Judicial Courts, Constables and constant Ferry-men; and having written their names upon tickets, they shall cause them to be placed in a box to be called the Jury Box, and shall then lay the whole of their doings before the town for a revision, who may confirm the same, or make such alterations therein as they may deem proper; and the said box shall be held and kept by the town or district clerk; and the persons whose names shall be continued in said box, shall be liable to be drawn, and serve on any jury, at any Court for which they may be drawn, once in every three years, and not oftener.* Nor shall any person be eligible to the office of Juror, who has served within three years.—Stat. 1824. ch. 119.

It shall be the duty of the several towns and districts to provide and have constantly kept in said box, ready to be drawn when required, a number of jurors, equal at least to one for every sixty, but not over one for every forty persons which said town or district may contain, computing by the last census which may have been taken, next before the preparing the box.†—Stat. 1824. ch. 119.

If any person whose name shall be in the box aforesaid, shall be convicted of any scandalous crime, or be guilty of any gross immorality, his name shall be withdrawn from the box, by the Selectmen.‡

And whenever there shall be a renewal, or an exchange of any of the tickets in the box for others, of the same persons, the Selectmen shall transfer from the back of the old tickets, to the new ones, the minutes of such drafts as have been made within the three preceding years.§

* Stat. 1812, ch. 141. § 2.

† Stat. 1807, ch. 140. § 2.

‡ *Ibid.* § 3.

§ *Ibid.* § 6.

As to the *venire*, the notification to the inhabitants, the Selectmen, and Town-Clerk, to be present at the drawing of Jurors—see *Constables*, V. page 85.

2. Of the meeting for the purpose of drawing Jurors, and the manner of proceeding.

When any town shall be duly assembled, in pursuance of a *venire facias*, for the purpose aforesaid, the town-clerk, or in his absence, one of the Selectmen shall carry into the meeting the box containing the names of those persons who have been selected to serve as jurymen, at the Court from which the *venire* issued ; which box shall be unlocked in the meeting, and the tickets mixed by the major part of the Selectmen, who are to be present ; and one of the Selectmen shall draw out as many tickets as there shall be jurors required by *venire*. The persons whose names shall be thus drawn, shall be returned to serve as jurors, unless from sickness, absence beyond sea, without the limits or in different parts of the Commonwealth, they shall be considered by the town as unable to attend the Court for which they had been drafted ; or had served on a jury within three years from that day. In either of these cases, or in case of a coroner's being drawn, at a time when the duties of a sheriff shall be devolved on him, by reason of a vacancy in that office, the person's names being returned into the box, others shall be drawn in their stead : but any person being thus excused, or who shall be returned, and shall not appear at Court, or on appearing, shall be there excused shall not be considered as serving, or be excused on another draft, should it happen within the term of three years, the minute on his ticket, notwithstanding.*

The Selectmen who shall draw from the box the ticket of any persons to serve as a juror, and who shall not be excused by the town, for either of the causes aforesaid, shall indorse thereon the date of the draft, and then return the same into the box.†

It will be noticed that the meeting is to be held at least six, and not more than twenty days, before the sitting of the Court, to which the *venire* is returnable.

* Stat. 1807, ch. 140. § 5.

† Ibid. § 6.

The duty of the CONSTABLE in notifying the jurors will be found under that head, page 85.

Quakers are not exempt from serving on the Grand Jury.—Mass. Rep. ix. 107.

If one has served as a juror in the Court of the United States within three years, he is not liable to serve in the State Courts.—Mass. Rep. xvi. 220.

3. Of drawing Jurors to attend Courts, upon special occasions.

When by a deficiency of either of the grand, traverse, or petit jurors of any Court, it cannot conveniently proceed in its business, it may cause writs of *venire facias*, for the drawing and returning so many jurors as shall be deemed necessary, to be forthwith issued, and directed to the constables of such towns in the county as the Court, under the existing circumstances, shall judge most proper; conforming, as far as the business of the Court will permit, to the principles, by which under this Act, jurors are to be selected, and their services equalized. And the jurors so drawn, shall be notified by the constables to attend on the Court immediately. And when from challenges, or otherwise, there shall not be a jury to determine any civil or criminal cause, which may be called on for trial, the sheriff or his deputy, or, in case of an interest or relationship in him to a party in the suit, a coroner, or such other disinterested person as the Court shall appoint, shall, by order of the Court, return jurymen from the bystanders, sufficient to complete the panel.

But no person is to be returned, whose name is not in the jury box of the town where he belongs; and there are to be seven at least of those returned in the *venire*, on the jury.—Stat. 1807. ch. 140. Sect. 7.

The S. J. C. have power to order *venires*, either for grand or petit jurors, to be returned on such day in any term of the Court, as they may judge best.—Stat. 1817. ch. 63.

4. Of provisional Jurors.

If at any time from the existing state of the country, the nature or quantum of the business pending, or from any other cause, the Courts respectively shall be of opinion that it will be a hardship on one set of traverse or petit jurors, to serve the whole of the term, and that

it would best meet the interest of the public, and of individuals, to have a second set of jurors to serve a part of the term, it shall be in the discretion of the Court to direct their clerk, when they shall issue their *venires* to the constables, in manner before directed, for the usual number of jurors, to require in the same *venire* that a second draft of an additional number, equal to the first number, shall be made, which shall be called provisional jurors, and shall form the second set, if, and so far as, they should be needed, and be especially sent for by the Court. And the constables shall also notify these jurors four days before the sitting of the Court, of their being drawn as provisional jurymen, in the same manner as is provided for the notification of the first set of jurors. And such provisional jurors shall hold themselves in readiness, and be obliged to attend and serve, if and when called for by the Court, in the course of that term. And in all cases, when provisional jurors shall be drawn as aforesaid, it shall be in the discretion of the Court, at any time during the session, to excuse, on request, from further attendance, any individual of the first set of jurors, on the condition of his giving seasonable and personal notice to such a provisional juror or jurors, for his or their immediate attendance, as shall be designated and called for, by the direction of the Court.*

5. Of the fees of Jurors.

All jurors are allowed one dollar and twenty-five cents a day for their attendance, and six cents a mile for their travel out and home.†

6. Penalties for Selectmen and others who shall neglect to discharge their duties respecting the return of jurymen.

The Selectmen, town constable, clerk of the town, clerk of the court, sheriff, or juror, who, having no justifiable cause therefor, shall neglect to discharge the duties incumbent on them, him or it, respectively by this Act, shall be subjected to the respective fines and amercements named to be assessed, ordered and imposed by the Court, in reference to whose jurors such neglect or failures may

* Stat. 1897, ch. 140. § 12.

† *Ibid.* § 16.

have taken place; namely, a fine not exceeding *twenty dollars*, at the discretion of the Court, on any Selectmen or town clerk, who shall so neglect to perform his or their duty herein prescribed, as by means whereof the jurors called for from his or their town, shall not be returned; a fine not exceeding *twenty dollars*, at the discretion of the Court on any constable who shall so neglect to perform the duties devolved on him by this act; by means whereof there shall be a failure of the jurors called from his town as aforesaid; a fine or amercement not exceeding *one hundred dollars*, at the discretion of the Court, on any town which shall so neglect the duties herein enjoined on it, or thereby to occasion a failure of the jurors called for, from such a town; a fine at the discretion of the Court, not exceeding *fifty dollars*, on their clerk or the sheriff, who shall so neglect the duties enjoined on them respectively by this Act, as to prevent a compliance with any of its provisions; a fine on any juror drawn, notified and returned in the manner as above described, who shall unnecessarily fail in his attendance, and not being an inhabitant of Boston, Salem, or Newburyport, not exceeding *twenty dollars*, and if an inhabitant of either of these towns, not exceeding *forty dollars*, to be divided equally among the jurors who shall attend and serve; and a fine not exceeding *eighty dollars*, on any town clerk or Selectman who shall be guilty of any fraud, either practising on the jury box, previously to a draft, or in the drawing a juror, or in returning the name of any juror into the box, which had been fairly drawn out, and drawing or substituting some other one in his stead, or in any other way whatsoever; and all such fines, which the Selectmen, constable, town-clerk, sheriff, or clerk of a court, shall incur by virtue of this act, for any neglect, shall be to the use of the county in which the offender dwelt at the time of the neglect, to be recovered by indictment, information, or an action brought by the treasurer of the county, before any Court having jurisdiction of the offence, provided the action shall be brought within twelve months after the offence shall have been committed: such fines or amercements as shall be ordered or imposed on towns for any neglect of their duties as before specified, shall be *to the use of the county in which the offending town may*

be ; and all fines and forfeitures for any of the frauds, by town clerks or Selectmen as above mentioned, shall be recovered by action of debt, in any Court having jurisdiction thereof: one moiety thereof to be, and enure to the Commonwealth ; the other moiety to him or them who shall prosecute for and recover the same.*

7. Duty of Selectmen in returning Jurors to ascertain damages occasioned by flowing lands.

Whenever a jury shall be ordered by the Court for the purposes expressed in the act for the support and regulation of mills,† the sheriff or coroner to whom the warrant shall be directed, shall, in writing, require of the Selectmen of the three towns nearest to that in which the land injured is situated, to return a number of jurors (not less than two, nor more than six, from any one town) to serve on the panel ; which jurors shall be drawn from the box, notified and returned as in other cases, excepting that the town need not be assembled, and that one day's notice to the persons drawn shall be sufficient.‡ The penalty for not attending when drawn on such a jury, is a fine not exceeding *ten dollars*.—Stat. 1824. ch. 153.—1825. ch. 109.

The fees for attendance is the same as at Court ; the travel is four cents a mile each way.§

8. Duty of Selectmen in returning Jurors to hear the complaint of any person for damages occasioned by the laying or discontinuance of a Highway.

The officer to whom the warrant is directed in these cases, shall make application to the Selectmen of two or more disinterested towns in the county, who shall draw, from the jury box of their respective towns, so many jurors as such officer shall require, not exceeding three from any one town.—Stat. 1802, ch. 135.—1812, ch. 121 & 1819, ch. 44.—1827, ch.

The fees of these jurors, are the same as in the case of flowage, as above.

* Stat. 1807, ch. 140. § 17.

† Stat. 1814, ch. 173.

‡ Stat. 1795, ch. 74.

§ Ibid.

9. Of their duty in returning Jurors to inquire into Nuisances.

Upon the requisition of the Sheriff, the Selectmen of the three towns next adjoining where any nuisance is complained of, shall draw from the boxes of their respective towns, twelve jurymen, to inquire into such nuisance, before two Justices of the Peace, *quorum unus*.*

XIV. *Of the duty of Selectmen in calling Town-meetings.*

When there shall be occasion of a town meeting, the constable or constables, or such other person as shall be appointed for the purpose, by warrant from the Selectmen, or the major part of them, shall summon and notify the inhabitants of such town to assemble, at such time and place in the same town as the Selectmen shall order; the manner of summoning the inhabitants to be such as the town shall agree upon; and when ten or more of the freeholders of a town shall signify, in writing, their desire to have any matter or thing inserted in a warrant for calling a meeting, the Selectmen are hereby required to insert the same in the next warrant they shall issue for a meeting, or call a meeting for the express purpose of considering thereof; and no matter or thing shall be acted upon in such a manner as to have any legal operation whatever, unless the subject matter thereof be inserted in the warrant for calling the meeting; and in case the Selectmen shall unreasonably deny to call a meeting upon any public occasion, any ten or more of the freeholders of such town may apply to a Justice of the Peace within and for the same county, who is hereby authorized and empowered to issue his warrant under his hand and seal, directed to the constable or constables of the town, if any such there be, otherwise to any of the freeholders applying therefor, directing him or them to notify and warn the inhabitants qualified to vote in town affairs, to assemble at such time and place in the same town as the said Justice shall in his said warrant direct, and for the purpose in the same warrant expressed. And when, by reason of death, removal or resignation of Selectmen, a

* Stat. 1801, ch. 16.

major part of the number originally chosen shall not remain in office within any town; in every such case, a major part of the survivors, or of such as remain in office, shall have the same power to call a town-meeting as a major part of the whole number first chosen.*

It has been said that warrants issued by Selectmen for calling town-meetings need not have seals affixed to them.—Colman vs. Anderson.—Mass. Rep. x. 105.†

Several distinct meetings, or a town-meeting for distinct purposes, even where the qualifications of the voters are diverse, may be called by the same warrant, distinguishing the different classes of voters.—Mass. Rep. vi. 7.

XV. *Of their power and duty to assign places for the exercise of certain Trades and Employments.*

When the Selectmen and the Justices of the Peace shall judge it necessary, they shall assign certain places for killing creatures for meat, distilling spirits, trying of tallow or oil, currying leather, and making earthen ware.‡ And they shall forbid the exercise of such employments in other places not so approved and allowed. And all such assignments by the Selectmen with the assent of two Justices, shall be entered in the town book, and also made known by having notifications thereof posted in some public places within the town.

If any distiller, tallow-chandler, manufacturer of oil, currier, butcher or potter, shall make use of any house or place, other than such as are or may be assigned and permitted for the exercise of such employments, they shall forfeit severally *five pounds*; and shall further be held to recognize not to use such building, for such prohibited purposes, for the term of three years. Or such buildings may be taken down and the materials sold to

* Stat. 1785, ch. 75. § 5.

† But the above case was upon the construction of the provisional statute of 4 W. & M. ch. 15. sec. 4; and it will be seen that no warrant whatever was required by that statute. It will be prudent therefore to affix seals to all warrants.

‡ Stat. 1785. ch. 1.

pay the expenses of the prosecution, if the Court shall so order.*

By subsequent statutes further remedies and a more summary process is provided for the abatement of nuisances.†

Towns have power to regulate the storage of Gunpowder, at town meetings, and to order that not more than fifty pounds, shall be kept in any building within twenty-five rods of any other building, nor that any shall be kept in the town, unless in light casks or canisters: Nor that more than twenty-five pounds shall be kept within ten rods of any other building, nor that a greater quantity than one pound shall be kept in any shop, within ten rods of any other building unless it be secured in tin, copper or brass canisters holding not more than five pounds each, closely covered with the same materials. Stat. 1829.

It is the duty of the Selectmen and Fire-Wards, to complain to a Justice of suspected violations of the law, and to obtain from him a warrant, to search for said Gunpowder directed to a Constable, who is to make return to the Justice of his doings. Any violator of the law is subject to a penalty from five to twenty dollars for each offence, to be sued for by the Selectmen or Fire-Wards, to be appropriated two thirds to the use of the person suing and the other third to the use of the town.—Stat. 1829. ch. 62.

XVI. *Their duty to direct Watches and Wards for the prevention of disturbances in public places.*

When and so often as a military watch shall not be appointed to be kept, the Justices of the Peace, (qualified to act) together with the Selectmen of each town, and in such towns where no Justice of the Peace so qualified dwells, the Selectmen alone shall have power, from time to time, to direct and order a suitable watch or watches to be kept nightly within such town, from and after nine o'clock in the evening until sun-rising in the morning, and also a ward to be kept in the day-time and evenings,

* Stat. 1785, ch. 1. § 3.

† Stat. 1790, ch. 75.—1801, ch. 18.

when they shall think the same watch or ward necessary ; and to appoint the number of persons whereof the same shall consist, the place or places wherein they shall be kept, and the hour or hours for keeping the same ; and to give orders in writing accordingly, signed by a major part of such Justices and Selectmen, or Selectmen alone, as the case may be, directed to any constable or constables of the town, empowering and requiring him or them, from time to time, to warn such watch or ward, and to see that all persons so warned by him or them do attend and do their duty in such manner as shall be required ; and in the warning thereof, to take care that some able householders or other sufficient persons be joined in each watch or ward. And such constable or constables shall charge the watch to see that all disturbances and disorders in the night be prevented and suppressed ; and to examine all persons whom they shall see walking abroad in the night after ten o'clock, and whom they shall have reason to suspect of any unlawful intention or design, of their business abroad at such season, and whither they are going ; and in case they give not reasonable satisfaction therein, then to secure, by imprisonment or otherwise, all such disorderly and suspicious persons, to be safely kept next morning ; then to carry them before one of the until Justices of the Peace, to be examined and proceeded against according to the nature of their offences, as is by law directed. And such watchmen shall walk the rounds in and about the streets, wharves, lanes, and principal inhabited parts within such town, to prevent any danger by fire, and to see that good order is kept, taking particular observation and inspection of all houses and families of evil fame, and shall strictly observe the charge to be given them as aforesaid. And each constable, when attending watch or ward, shall carry with him the usual badge of his office.

XVII. Of the power and duty of Selectmen in laying out Highways.

1. What ways they may lay out, and the manner of proceeding.

The Selectmen of the several towns are authorized and empowered, either personally, or by such other person or

persons as they shall appoint, to lay out, within their respective towns, particular and private ways, for the use of such town only, or for the use of one or more individuals thereof, or proprietors therein. And if any particular person or persons who are owners of the land through which such private roads shall be laid out, be injured thereby, he or they shall receive such recompense as the party interested and the Selectmen shall agree upon, to be paid by the town, or the individual person or persons, for whose use the road is laid out, or as shall be ordered by the Court of Sessions, upon an inquiry into the same, by a jury to be summoned for that purpose, or by a special committee, if the parties agree thereunto: *Provided always*, That no private way laid out by the Selectmen, or their order, as aforesaid, shall be established as such, until the same has been reported to the town, at some public meeting of the inhabitants thereof, regularly notified and warned, and by them approved and allowed.

The statute, authorizing the Selectmen of towns to lay out private ways, does in terms confine this authority to the laying out of such ways as shall be for the use of the town only to which they belong; but the intention of the Legislature, in using these terms, was only to distinguish the cases within the authority of a town by their Selectmen, from those committed to the Court of Sessions; and it is no objection to the exercise of the authority by a town, that the road to be laid out will be as much used by the inhabitants of other places, or by strangers who may have occasion to pass on it, as by those for whose use it was declared to be established; for, the real utility of a road to any town may consist less in the actual passing and re-passing through it, by the inhabitants of the town, than in facilitating the intercourse of strangers or inhabitants of other towns with them.—*Cragie vs. Mellen & al.*—*Mass. Rep. vi. 7.* A town way, is not a private way, but a public highway, under Stat. 1786, ch. 81. 6 *Pickering*, 62.

The doings of the Selectmen in laying out a town-way must be recorded.—*Mass. Rep. ii. 529.*

Upon an application to the Sessions for the acceptance

or laying out of a town-way the town must be notified, before the appointment of a committee.*

2. Proceedings when Selectmen refuse to lay out a Highway.

If the Selectmen shall unreasonably delay, or refuse to lay out, any such private way as before described, being thereunto requested, in writing, by one or more of the inhabitants or proprietors of land in such town, then the Court of Sessions for the same county, at any session thereof, within one year, if the request appear to them reasonable, may cause the same private way to be laid out at the costs of the persons applying, by a committee of three disinterested freeholders; which committee shall estimate the damages occasioned thereby (if any there be) as well as ascertain the place and course of the said private way. The damages to be paid by the town, if it be of general benefit, otherwise by the individual or individuals for whose use and benefit the way is laid out. And the Justices of the respective Courts of Sessions, upon application to them made by any party aggrieved, at the continuance of any private way, may order and direct a discontinuance thereof, after notifying and hearing the parties interested therein, if they shall thereupon adjudge and determine such discontinuance reasonable.†

3. Proceedings when towns neglect or refuse to approve and allow of any Way laid out by the Selectmen.

When any town shall unreasonably delay, or refuse to approve and allow of any private way laid out by the Selectmen thereof, or their order, and put the same on record, any person or persons aggrieved by such delay or refusal, may apply to the Court of Sessions, for the same county, within twelve months after such refusal or delay; and the same Court, after hearing the town thereon, may accept and approve of the said private way, as laid out by the Selectmen, and direct the same to be recorded in the town-book; or they may order the private way petitioned for, to be laid out by a committee of three disinterested freeholders, to be by them appointed for that purpose, which committee shall be under similar directions and ob-

* Stat. of 1786, ch. 67. § 1.

† Stat. 1786, ch. 67. § 2.

ligations as to locating and estimating the damages occasioned thereby, as in this Act is prescribed for a committee of five, in locating or altering a county highway.*

The jury or committee are to be under oath ; and if they do not increase the damages, the complainant shall pay all the costs incurred. And they are also to be under the same directions and obligations as a committee for laying out a county road.

The statute has given to a town the right of judging whether any proposed road will be for its convenience or not ; and the decision of the town upon the question, regularly submitted to it, is final and conclusive ; unless within the time limited by the statute there have been an application to the Court of Sessions, and the doings of the town have been overruled.—Mass. Rep. vi. 7.

When a town-way has been regularly laid out by the Selectmen, and approved by the town, it must be considered as established ; and the Surveyors or Selectmen, acting as such, cannot be trespassers in making such road passable, although the year, during which an application, *quasi* an appeal, may be made, having not elapsed.—*Ibid.*

But, if any person, when a road is laid out by the Selectmen through his ground, notify them or the town, before the road is begun to be made, that he intends to make application to the Court having jurisdiction of the subject, and to pray for a discontinuance of the road, and he immediately make such application ; and, pending the same, the surveyor enter and begin to make the road ; perhaps, upon application to the Supreme Judicial Court, some process would issue to stay the proceedings of the surveyor until the question should be decided.—Mass. Rep. vi. 7.†

* Stat. 1786, ch. 67. § 3.

† By the records of some of our ancient towns, it appears there was a practice of laying out formerly what were styled *Bridle-Ways* and *Ways subject to Gates and Bars*. From the importance given to these roads by the increase of population and the advanced value of lands, difficulties have in some places arisen, in giving a proper character to these *anomalous highways*. It will be found they were generally laid out, accepted, and recorded as other *town roads* ; and there is no difficulty in ranking them in that class. If the selectmen had authority to agree with the owner of the land for an *open way*, it was undoubtedly

The act establishing County Commissioners provides, that when application shall be made to the Commissioners to lay out or discontinue a private way or town way, where the Selectmen or the town, have unreasonably neglected to grant the request, the petitioners shall first recognize to the County for the costs, then the Commissioners shall give the same notice, and have the same proceedings, as in the case of County roads. And when they shall order a private way or town way laid out it shall be done by the Commissioners, but the expenses of locating and making such roads shall be borne as heretofore, before the passing of the act.—Stat. 1827, ch. 77.

4. As to the damages to the owners of the Land over which the way passes.

The Act does not require the Selectmen, in laying out a town-way, to estimate the damages; but if the owner of the land cannot agree with the Selectmen as to a compensation, or upon a committee to estimate the damages, he must make application to the Court of Sessions for a jury.—Mass. Rep. vi. 7.

Any person having an interest in the lands, as lessee for years, tenant for life, as well as he in reversion or remainder, is entitled to damages, and is an *owner* of the land within the intention of this statute.—Mass. Rep. vi. 246.*

XVIII. *Duty of Selectmen in assigning limits to the Highway Surveyors.*

It is the duty of the Selectmen, *before* the first day of *May*, annually, to assign to the several Surveyors, their divisions and limits for making and repairing the highways.†

competent for them also to *agree* to receive the easement upon such *restrictions* as would subserve the public interest, and be least injurious to the owner of the soil. These roads should be repaired as other town-ways.

* The powers of the Court of Sessions as to Highways, are transferred to the County Commissioners.—Stat. 1827, ch. 77.

† Stat. 1796, ch. 58. § 4.

XIX. *Duty of Selectmen in appointing a Sealer of Weights and Measures.*

It is the duty of the Selectmen, in the month of *March* or *April*, annually, to appoint a suitable person to be a Sealer of Weights and Measures within the same. And it shall also be the duty of the selectmen in such towns or districts in this Commonwealth, as shall, at any of their annual meetings in *March* or *April*, which shall be holden after the first day of *January* next, vote to have more than one Sealer of Weights and Measures within their town or district to appoint suitable persons therefor. And the selectmen of the several towns and districts are hereby authorized to remove from office any person or persons by them appointed as Sealers of Weights and Measures, by virtue of this Act. And it shall be the duty of the Selectmen, upon any vacancy which shall happen in the office of Sealer of Weights and Measures, either by death, removal, resignation, refusal to accept, or otherwise, immediately to appoint some other suitable person to fill the place. And each person who shall be appointed to such office shall be notified of his appointment, and sworn as other town officers are. And if any person so appointed and notified shall refuse or neglect to take such oath, for the term of seven days after he shall have received such notice, he shall forfeit and pay *five dollars*, to be recovered in the manner and to the uses other fines are, for refusing to serve in other town offices. And if any Selectman shall not duly execute this law, so far as to him appertains, he shall forfeit and pay, for each month's neglect, the sum of *ten dollars*, to be recovered in like manner, and to like uses.*

XX. *Duty of Selectmen in preventing the spread of Contagious Diseases.*

1. As to providing Hospitals for the Small Pox.

When the Small Pox shall unexpectedly break out in any town, the Selectmen of the same shall have power

* Stat. of 1799, ch. 60, § 4.

and it shall be their duty immediately to provide a hospital or place of reception for the sick and infected, as they shall judge best for their accommodation and the safety of the inhabitants, and may give license for inoculating there, all such persons as shall be supposed to have taken infection; and such hospitals and places of reception shall be subject to the orders and regulations of the Selectmen, in the same manner as is provided respecting licensed hospitals; and the said Selectmen shall cause such sick and infected persons to be removed to such hospitals or places of reception, unless the condition of the sick person should not admit of removal without danger of life; in which case, the house or place where the sick shall remain, shall be considered as an hospital, to every purpose before mentioned; and all persons residing in, or in any way concerned with the same, shall be subject to the orders and regulations of the Selectmen of the town.*

2. Of their duty in preventing the spread of the infection.

It shall be the duty of the Selectmen to use all possible care to prevent the spreading of infection, and to give notice to travellers of infected places, by displaying red flags at proper distances, and by all other means which in their judgment shall be most effectual for the common safety; and in case any physician or other person within any of the hospitals or places of reception above described, or who shall attend, approach, or be concerned with the same, shall violate or contravene any of the restrictions, orders or regulations of the same, either in respect of himself, or his or any other person's property, the person so offending, shall, for each offence, forfeit and pay a sum not exceeding *thirty pounds*, nor less than *four pounds*.†

3. Householders to give notice to the Selectmen of infected persons in their houses.

Whenever any householder shall know that any person within his or her family is taken sick of the Small Pox, such householder shall immediately give notice thereof to the Selectmen of the town or district of which such householder shall be an inhabitant or resident, on pain that

* Stat. 1792, ch. 58, § 5.

† Ibid. § 6.

every householder who shall refuse or neglect to give such notice, shall forfeit and pay for such offence a sum not exceeding *thirty pounds*, nor less than *ten pounds*.*

4. Power of Selectmen to make regulations for Hospitals.

It shall be lawful for the inhabitants of any town, at any meeting legally warned, eight days before holding the same, to agree upon, erect, establish or appoint hospitals, for inoculation with the Small Pox within the same town as shall be thought proper, by the major part of the legal voters present at the same meeting: *Provided however*, that all such hospitals shall be subject to such orders, regulations, and restrictions as the Selectmen of the town, or a committee of said town appointed for that purpose, where such hospital shall be, shall agree upon and establish for the safety of the people; and the inhabitants of the same town, at a legal meeting, shall have power to discontinue such hospital whenever they shall think proper: *Provided however*, that no such hospital shall be erected within one hundred rods of any dwelling-house inhabited, situated in any adjacent town, without the consent of such adjoining town in legal town-meeting therefor, first had and obtained.†

5. Penalty for any person inoculating without authority.

No person shall inoculate any other person, or inoculate himself or herself, or suffer himself or herself to be inoculated with the Small Pox,‡ unless at some hospital licensed and authorized, on pain that every person so of-

* Stat. 1792, ch. 58. § 7.

† *Ibid.* § 2.

‡ The efficacy of the Cow Pox, in preventing the spread of the loathsome disease above provided for, one would have supposed would have converted the above Act into a dead letter in our statute-book. But recent experience in some parts of the State, convinces us that its wholesome provisions cannot be overlooked with impunity. Notwithstanding the Legislature has wisely provided for the general diffusion of *vaccination*, by authorizing towns to raise money to defray the expenses, and by making it their imperative duty to choose a committee, annually, to superintend the inoculation; yet, from a strange infatuation, the law is disregarded in many of our towns until the lives of many of our valued citizens have fallen victims to an unpardonable neglect. Physicians are to notify selectmen of any contagious disease under severe penalties.—Stat. 1827.—See *Towns, Cow-Pox, and Stat. of 1809*, ch. 117.

fending, shall, for each offence, forfeit a sum not exceeding *forty pounds*.*

6. Duty of Selectmen in providing for persons infected with any contagious Disease.

For the better preventing the spreading of infection, when it shall happen that any person or persons coming from abroad, or belonging to any town or place within this State, shall be visited, or shall lately before have been visited with the plague, small pox, pestilential or malignant fever, or other contagious sickness, the infection whereof may probably be communicated to others, the Selectmen of the town where such person or persons may arrive or be, are hereby empowered to take care and make effectual provision in the best way they can, for the preservation of the inhabitants, by removing such sick or infected person or persons, and placing him or them in a separate house or houses, and providing nurses, attendance, and other assistance and necessities for them; which nurses, attendance and other assistance and necessities, shall be at the charge of the parties themselves, their parents or masters, (if able,) or otherwise at the charge of the town or place whereto they belong; and in case such person or persons are not inhabitants of any town or place within this State, then at the charge of the Commonwealth.†

7. Power to send infected persons out of the State.

Any person or persons coming from any place out of this State, where the Small Pox or other malignant distemper is prevailing, into any town within this State, shall, when thereto required by the Selectmen of such town, within the space of two hours from the time they shall be first informed of their duty by law in this particular, give notice to one or more of the Selectmen, or the Clerk of such town, of their coming there, and of the place from whence they came, upon pain of forfeiting, in case of neglect, the sum of *one hundred dollars*. And such person or persons, if not disabled by sickness, shall, within the space of two hours after warning given to him or them

* Stat. 1792, ch. 58. § 3.

† Stat. 1797, ch. 16. § 1.

by the Selectmen of such town for that purpose, depart from this State, in such manner and by such road as the said Selectmen shall direct ; and in case of refusal, it shall be lawful for any Justice of the Peace in the county where such town may lie, by a warrant directed to a constable or other proper officer, or other person whom the Justice shall judge proper, to cause such person or persons to be removed into the State from whence he or they may have come ; and any person removed by warrant as aforesaid, who, during the prevalence of such distemper, shall presume to return into any town of this State, without liberty first obtained from such Justice, shall forfeit and pay the sum of *four hundred dollars* ; and any inhabitant of this State who shall entertain in his house any person warned to depart as aforesaid, for the space of two hours after notice given him of such warning, by one or more of the Selectmen aforesaid, shall forfeit and pay the sum of *two hundred dollars*.*

8. Duty in examining Travellers at the avenues of the State.

It shall and may be lawful for the Selectmen of any town near to, or bordering upon either of the neighbouring States, to appoint, by writing under their hands, some meet person or persons to attend at ferries or other places, by or over which passengers may pass from such infected places ; which person or persons so appointed, shall have power to examine such passengers as they may suspect to bring infection with them, and, if need be, to hinder and restrain them from travelling, until licensed thereto by a Justice of the Peace within such county, or by the Selectmen of the town in which such person or persons may come ; and any passenger, who, coming from such infected place, shall (without license aforesaid) presume to travel within this State, unless it be to return by the most direct way to the State from whence he came, after he shall be cautioned to depart by the person or persons appointed as aforesaid, shall forfeit and pay the sum of *one hundred dollars*.†

* Stat. 1797, ch. 16. § 2.

† *Ibid.* § 2.

9. Of impressing Houses, Nurses, &c. for the accommodation of the Sick.

If need be, any two Justices of the Peace may make out a warrant, directed to the sheriff of the county, or his deputy, or constables of the town or place where any such sick person or persons may be, requiring them, or any of them, in the name of the Commonwealth, with the advice and direction of the Selectmen of the same, to remove such infected person or persons, or to impress and take up convenient houses, lodging, nurses, attendance, and other necessities, for the accommodation, safety, and relief of the sick. And such sheriff, his deputy, and constable, are hereby authorized and required to execute such warrant accordingly.*

10. Of their power and duty in examining and securing Baggage, Clothing, and Goods, that they suspect is infected.

Whenever there shall be brought into any town within this State, either from any other town therein, or from ports without the State, any baggage, clothing, or goods of any kind whatsoever, and it shall be made to appear by the Selectmen of the town to which such baggage, clothing, or other goods shall be brought, or by the major part of such Selectmen, to the satisfaction of any Justice of the Peace, that there is just cause to suspect such baggage, clothing, or other goods, to be infected with the plague, small pox, pestilential fever, or other malignant contagious distemper, it shall be lawful for such Justice of the Peace, and he is hereby required in such case, by warrant under his hand and seal, directed to the sheriff or his deputy, or any constable of the town in which such baggage, clothing, or other goods shall be, requiring him to impress so many men as said Justice shall judge necessary to secure such baggage, clothing, or other goods, and said men to post as a guard and watch over the house or other place or places where such baggage, clothing, or other goods shall be lodged; which guard and watch are hereby required to take effectual care to prevent such baggage, clothing, or other goods being removed or intermeddled with, by any persons whatsoever, un-

* *Ibid*, § 4.

til due inquiry be made into the circumstances thereof, requiring likewise the said sheriff, his deputy, or the constable aforesaid, if it shall appear necessary, with the advice and direction of said Selectmen, to impress and take up convenient houses or stores, for the receiving, lodging, and safe keeping of such baggage, clothing, or other goods, until the same shall be sufficiently cleansed from infection. And in case it shall appear highly probable to the said Justice that such baggage, clothing, or other goods, are infected as aforesaid, he is hereby empowered and directed to issue his warrant in manner as aforesaid, requiring said sheriff, his deputy, or any constable, or other person therein specially named, to remove said baggage, clothing, or other goods, to some convenient place, where there shall be the least danger of the infection spreading; there to remain until the same shall be sufficiently aired and freed from infection in the opinion of said Selectmen. And the said sheriff, deputy sheriff, or constable, in the execution of said warrants, are empowered and directed, if need be, to break up any house, ware-house, shop, or other place, particularly mentioned in said warrant, where such baggage, clothing, or other goods shall be; and in case of opposition, to require such aid as shall be necessary to effect the execution of said warrants, and repel such opposition; and all persons are hereby required, at the commandment of either of the said officers, having either of the warrants aforesaid, under penalty of *ten dollars*, to be recovered before any Justice of the peace in the county where such opposition may happen, to assist such officer in the execution of the same warrant, against any opposition aforesaid; and the charges of securing such baggage, clothing, or other goods, and of airing and transporting the same, shall be borne and paid by the owners thereof, at such rates and prices as shall be set and appointed by the selectmen of the town, where such baggage, clothing, or other goods shall be.*

11. Power as to Vessels that arrive, having infected persons on board.

Whenever any such vessel shall arrive in any port within this State, the Selectmen have authority to order her

* Stat. 1797, ch. 16. § 5.

the Hospital at Rainsford's Island, in the harbour of Boston. Whenever such vessel cannot depart without great inconvenience or damage, she is to be disposed of, as is provided in the Act of 1797, ch. 16.

The penalty for the Master in refusing or neglecting to sail in six hours after wind and weather shall permit, is *one hundred dollars*; and for each mariner refusing, a penalty is *one hundred dollars*; and if unable to pay, *six months' imprisonment*.*

If any master, seaman, or passenger, belonging to any vessel on board which any infection is, or may have lately been, or suspected to have been, or which may have come from any port where any infectious mortal distemper prevails, shall refuse to make answer on oath to such questions as may be asked him or them relating to such infection, by the Selectmen of the town to which such vessel may come (which oath the said Selectmen are hereby empowered to administer) such master, seaman, or passenger, so refusing, shall forfeit the sum of *one hundred dollars*; and in case he is not able to pay said sum, he shall suffer *six months' imprisonment*.† See *Health Committee, page 110*.

12. Penalty for Physicians who neglect to notify Selectmen.

When any Physician shall know that any person, whom he is called to visit, is affected with the small pox, varioloid, or any disease whereby the contagion of the small pox may be disseminated, such physician shall immediately give notice to the Selectmen of the town, where such person resides, under a penalty of not less than \$40, nor more than \$100 for such offence, to be paid into the Town Treasury.—Stat. March 12, 1828.

XI. *Their powers as to the opening of Drains and Common Sewers.*

No person, without the consent of the Selectmen, signed in writing, under the hand of the town-clerk, shall dig or break ground in any highway, street, or lane, for the laying, altering, repairing or amending any drain or

* Stat. 1797, ch. 16. § 8.

† Stat. 1797, ch. 16. § 9.

common shore, on penalty of *four dollars* for each offence to be applied to the use of the poor, and recovered in an action of debt by the town-treasurer, before any disinterested Justice.

All drains and common shores for the draining of cellars, made or repaired in any street or highway, shall be substantially done with brick or stone, or such other materials as the Selectmen shall permit, and in such manner as they shall direct.

When any of the inhabitants, at their own charge, make and lay out any common shore or main drain, every person who may enter his drain into the same, or shall receive any benefit thereby, for the draining off their cellars or lands, shall pay a proportionable part of the charge, to be ascertained and determined by the Selectmen or a major part of them, and certified under their hands, securing the right of appeal to the Court of Sessions.

And when it shall be necessary to open a drain or common shore, that shall be stopped or gone to decay, in order to repair it or remove such obstructions, all the persons benefited thereby shall pay their proportional parts of the expense thereof, to be ascertained as aforesaid. And each person who, having notice thereof, shall not, within ten days after such notice, pay the same to the person appointed by the Selectmen to receive it, shall be held to pay him double the sum mentioned in the certificate, with costs: *Provided*, the person or persons who shall have occasion to open the same shall notify all persons interested therein seven days at least before they begin, in such manner as the Selectmen shall direct. If they make objections thereto, which the Selectmen should judge reasonable, they shall not be held to pay any part of the expense; but if they do not make their objections within *three* days after being so notified, or if the Selectmen deem their objections not sufficient, they shall, under their hands, give liberty to the persons applying, to proceed.*

* Stat. 1796, ch. 47. See also stat. 1795, ch. 62, as to the powers of Commissioners of Sewers, in draining tracts of meadow, low or swamp lands, that are flowed or damaged by stagnant waters remaining thereon.

XXII. *Their power and duty in preventing the destruction of Oysters, and other Shell Fish.*

The Selectmen of towns where oyster-beds are found, are authorized to give permits in writing to any person to take oysters from their beds, in such quantities and at such times as they shall think reasonable, and express in their permit. And any person who shall take or destroy any oysters, or obstruct the growth of the same, shall forfeit and pay *two dollars* for every bushel of oysters so taken or destroyed: *Provided however*, that any inhabitant of the town, where such oyster-bed is situated may take oysters for the use of his or her family, from the first day of September to the first day of June, annually, without such permit.

The Selectmen of the towns of Malden, Medford, Charlestown, Rochester, Wareham, Sandwich, Barnstable, Yarmouth, Dennis, Chatham, Eastham, Wellfleet, Edgartown, Tisbury, Dartmouth, Westport, New-Bedford, Freetown, Swansey, Somerset, Berkley, Hingham, Brookline, Weymouth and Plymouth, have like powers in granting permits to take other shell fish; and any person taking them without such permit, shall forfeit *one dollar* for each bushel so taken: *Provided*, that any inhabitant shall have a right at all times to take such fish for the use of his or her family.

Fishermen are not allowed to take more than seven bushels of such fish in a week from any of said towns, notwithstanding such permit.*

Several towns have the taking of these fish regulated, by sundry special Acts.

XXIII. *Authority of Selectmen to appoint Weighers and Inspectors of Onions.*

The Selectmen of towns where Onions are shipped, are authorized and directed to appoint some suitable person or persons to weigh the same, and give certificates of their weight; which persons shall be sworn to the faithful performance of their duty, and shall receive, as fees, *eight*

* Stat. 1799, ch. 19.

pence for every hundred bunches, not exceeding five hundred; and *four pence* for a greater quantity, to be paid by the purchaser.*

It is required that Onions be exported from the Commonwealth in bunches, and that they weigh as follows:—rare-ripes, two and a half pounds, and Onions from the seed, three and a half pounds a bunch.

If any person shall offer for sale in any town within this Commonwealth any Onions in bunches, not weighed and certified as aforesaid, it shall be the duty of the selectmen to seize the same, and cause them to be sold, and they shall be held to account for one half of the proceeds thereof to the Overseers of the Poor, for the use of the poor, and the other half to the informer.†

XXIV. *Duty in encouraging the killing of Wolves.*

Every person who shall kill any Wolf within the Commonwealth, is entitled to a bounty of *four pounds*, for a full grown Wolf, and *one pound* for a *Wolf's whelp*, to be paid out of the treasury of the town where such animal is killed; and the same shall be allowed the town from the treasury of the State.

But the person so killing, shall bring the head thereof unto the constable of the town, who in presence of the Selectmen, shall cut off both the ears of the same, and cause them to be burned. And such Selectmen and constable shall give a receipt, expressing whether the same was a grown wolf or a whelp; which receipt shall entitle the person to draw the bounty from the town treasury.‡

XXV. *Duty of Selectmen in directing Surveyors of Highways.*

No Surveyor of Highways shall cause any water-course, occasioned by the wash of any highway or town-way, to be so conveyed by the side of any highway as to incommodate any person's house, store, shop, or other building, or to obstruct any person or persons in the prosecution of his or her business or occupation, without the approbation and consent of the Selectmen of such town or other

* Stat. 1785, ch. 25. § 14.

† Stat. 1785, ch. 25. § 15.

‡ Stat. 1782, ch. 39.

place, signified in writing, to such Surveyor ; and any person or persons who may consider him or herself to be aggrieved by such water-course, may complain to the Selectmen of such town or other place ; and the Selectmen, on receiving such complaint, shall proceed to view such watercourse so complained of, and after attending to the circumstances of the same, shall, if they think it reasonable, direct said Surveyor to alter the said water-course in such way and manner as they shall think just and proper ; and when the highways are blocked up, or incumbered with snow, the Surveyors shall forthwith cause so much thereof to be removed, or trod down, as will render the roads passable.*

The Selectmen or Assessors of each town are authorized, empowered, and directed, to assign and appoint in writing, annually, to the Surveyors, their several limits and divisions of the highways and town-ways, for repair and amendment, unto which assignments the said Surveyors are directed to observe and conform themselves.†

And, by a more recent statute, it shall be the duty of the Selectmen of the several towns within this Commonwealth, before the first day of *May*, annually, to assign to the several Surveyors their divisions and limits for making and repairing the highways ; and one half of the sum at least, which shall be agreed upon and granted by any town or district for making and repairing the highways, shall be laid out and expended for that purpose before the first day of *July* next after granting the same.‡

XXVI. *Duty of Selectmen in directing places for Sail Lofts, Rigging Lofts, and Livery Stables.*

If any person shall occupy or improve any tenement or building whatever, in any part of any maritime town in this Commonwealth, for the business or employment of a Sail-maker or Rigger, or keeper of a Livery Stable, except only in such parts of the town as the Selectmen thereof, or a major part of them shall direct and determine, such Sail-maker or Rigger so offending, shall forfeit and pay for each offence, *ten dollars* a month, and such keep-

* Stat. 1786, ch. 81. § 1.

† Stat. 1796, ch. 58. § 4.

‡ Stat. 1786. ch. 81. § 2.

er of a Livery Stable shall forfeit and pay for each offence, *fifty dollars*, for every month so occupying the same, and so in proportion for a longer or shorter time.*

XXVII. *Of their powers respecting the removal of dead bodies.*

If any person not authorized by the Board of Health or Selectmen, shall dig up, remove, or carry away any human body, or the remains thereof, or aid or assist therein, he shall be punished by imprisonment, not exceeding one year, or fined, not exceeding *one thousand dollars*.

And every person who shall knowingly receive, conceal or dispose of said dead body, shall be subject to the like penalties.†

XXVIII. *As to their duties under the Act for regulating the Militia.*

For this subject, see *Militia*, page 114.

This subject will require the particular attention of Selectmen, as the duties are important and the penalties severe.—Stat. 1809, ch. 108.—1822, ch. 122.—1825, ch. 153.

XXIX. *Of their powers respecting Hay Scales.*

The selectmen, for the time being, of every town, are authorized from time to time, as they may think expedient, to appoint, for a term not exceeding one year, one or more person or persons, to have the superintendence of the Hay Scales belonging to such town or city, whose duty it shall be to weigh hay offered for sale in such town or city, and any other article offered to be weighed; and the person or persons so appointed, shall conform to all such rules and regulations as shall from time to time be made and established by the selectmen concerning the said Hay Scales and the use of the same, and the compensation or fees for weighing hay and other articles; and the said Selectmen, for the time being, are hereby authorized to remove any Weigher and fill any vacancy

* Stat. 1785, ch. 1. § 1.

† Stat. 1814, ch. 173.

that may occur from death or otherwise ; and if any person, not authorized as aforesaid, shall set up any Hay Scales in any town for the purpose of weighing hay, or other articles, he shall forfeit and pay for such offence the sum of *twenty dollars* a month, so long as the same shall be continued, to be recovered by an action of debt in any court proper to try the same, to be appropriated to the use of said town or city : *Provided, however*, that this Act shall apply to such towns only as may adopt the same at their annual meetings in March or April, and shall cease to operate in such towns, whenever at any meeting the said town shall so determine.*

XXX. *Of their duty in licensing Public Shows and Theatrical exhibitions.*

Selectmen are authorized to license all public shows and exhibitions, of whatever name or nature, to which admission is obtained by payment of money, on such terms and conditions as to them may appear just and reasonable, and to regulate the same in such manner, as to them may appear necessary to preserve order and decorum, and to prevent disturbance of the peace. Any person who shall establish or promote any such exhibition or show, or publish or advertise the same, or otherwise aid or assist therein, without such license, or contrary to its terms and conditions, or after the same shall have been suspended or revoked by the selectmen, shall forfeit a sum not exceeding \$200 to be recovered by indictment. —Stat. 1825, ch. 152.

Any offender against this law may be stayed and arrested by warrant from a Justice of the Peace, who has power to cause the offender to recognize to the next Supreme Judicial Court or Court of Common Pleas, and in the mean time to keep the peace and be of good behaviour.

Licenses are not to continue longer, than such selectmen shall continue in office, and all monies received for them, are to be appropriated for the benefit of the poor of the town.—*Ibid.*

* Stat. 1824, ch. 122.

XXXI. *Of licensing fire works.*

If any person shall have in his possession, with intent to sell or to set fire to the same, or shall offer to sell or to give any cracker, squib, serpent or rocket, or shall set fire to or throw any lighted squib, crackers, serpent or rocket, without license of the selectmen, he shall forfeit five dollars, for each offence, one half to the use of the poor of the town, and one half to the prosecutor.—Stat. 1826, ch. 3.

XXXII. *Officers to be annually appointed by them.*

1. AUCTIONEERS.—See page 59, and Appendix.
2. SEALERS OF WEIGHTS AND MEASURES, page 213
3. MEASURERS OF WOOD.....112
4. INSPECTORS OF CHARCOAL BASKETS.....114
5. ENGINE-MEN.....91 and Appendix.*
6. WEIGHERS and inspectors of Onions in towns where Onions are shipped.....205
7. WEIGHERS of Beef in towns where Beef is sold for marketing or barrelling†—See WEIGHTS AND MEASURES.

8. *To see that TYTHINGMEN are chosen.*

See TYTHINGMEN.

Weighers of Hay and Superintendents of Hay Scales.

See page 208

XXXIII. *When they may deliver up dead bodies for dissection.*

It shall be lawful for the board of health, overseers of the poor, and selectmen, and for the directors of the House of Industry to surrender the dead bodies of such person, except town paupers, as may be required to be buried at the public expense, to any regular physician,

* In towns that contain more than 3000 inhabitants, Selectmen may appoint thirty men to every common Fire-Engine, and forty men to a hydraulion or suction engine; but they cannot reduce a militia company below sixty four effective privates without consent of their captain.—Stat. 1826, ch. 110.

† Stat. of 1815, ch. 99.

duly licensed according to the laws of this Commonwealth, to be by said physician used for the advancement of anatomical science, preference being always given to medical schools, during such portions of the year as such schools may require subjects for the instruction of medical students:—Provided always, that no such dead body shall in any case be so surrendered, if within thirty six hours from the time of its death, any one claiming to be kin, friend, or acquaintance to the deceased, shall require to have said dead body inhumed, or if it be made to appear to the selectmen that such dead body is the remains of a stranger or traveller, who suddenly died before making known who or whence he was:—And provided further, that every physician so receiving any such dead body shall give to the selectmen a good and sufficient bond or bonds that such body by him so received, shall be used only for the promotion of anatomical science, within this Commonwealth, and so as in no event to outrage the public feeling, and that after having been so used, the remains shall be decently inhumed.—Stat. 1830. ch. 57. § 3.

XXXIV. *To protect the Sepulchres of the Dead, and to Legalize the Study of Anatomy in certain cases.*

Sec. 1. Hereafter it shall not be lawful to locate or construct any railroad, canal, turnpike, highway, town way or public easement whatsoever, in, upon, or through any enclosure used or appropriated for the burial of the dead, without authority to that effect, specially granted by law; or the consent of the inhabitants of the town where such enclosure is situated; and any person offending against the foregoing provision, shall be subject to indictment, in any Court competent to try the same, and to imprisonment for a term not exceeding one year, or a fine, to the use of the Commonwealth, not exceeding two thousand dollars, or both of said punishments, at the discretion of the Court trying the same, and according to the nature and aggravation of the offence. *Provided, nevertheless,* That this enactment shall not apply to any such railroad, or other public easement already located.

Sec. 2. If any person shall wilfully destroy, mutilate,

deface, injure or remove any tomb, monument, grave-stone, or other structure placed in memory of the dead ; or any fence, railing, or other curb for the protection or ornament of any tomb, monument, grave-stone, or other structure aforesaid, or of any enclosure for the burial of the dead ; or shall wilfully destroy, remove, cut, break or injure any tree or shrub, placed for ornament within the limits of any such enclosure ; such person so offending, shall forfeit and pay, to the use of the Commonwealth, a sum not less than ten nor more than five hundred dollars, to be recovered by indictment in any Court competent to try the same.

Sec. 3. It shall be lawful for the Board of Health, Overseers of the poor, and Selectmen of any town in this Commonwealth, and for the directors of the House of Industry, Board of Health, Overseers of the Poor, or Mayor and Aldermen of the city of Boston, to surrender the dead bodies of such persons as it may be required to bury at the public expense, to any regular Physician, duly licensed according to the laws of this Commonwealth, to be by said Physician used for the advancement of Anatomical Science ; preference being always given to the Medical Schools that now are, or hereafter may be, by law established in this Commonwealth, during such portions of the year as such schools, or either of them, may require subjects for the instruction of Medical Students. *Provided, nevertheless,* That no such dead body shall in any case be so surrendered, if within twenty-four hours from the time of its death, any person claiming to be kin or friend to the deceased, shall require to have said body interred ; or if such dead body shall be the remains of a stranger, or traveller, who suddenly died before making known who or whence he was ; but said dead body shall be interred, and when so interred, any person disinterring the same, for purposes of dissection, or being accessory thereto, shall be liable to the punishment provided in the first section of the Act to which this is an addition. *And provided further,* That every Physician so receiving any such dead body, before it shall be lawful to deliver the same to him, shall in such case give to the Mayor and Aldermen of the city of Boston, or to the Selectmen of any town of this Commonwealth, as the case may require,

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good and sufficient bond, that each body so by him received, shall be used only for the promotion of Anatomical science, and that it shall be used for such purpose within this Commonwealth only, and so as in no event to outrage the public feeling; and that, after having been so used, the remains thereof shall be decently interred.

Sec. 4. The body of no person, requesting during his or her last sickness to be interred, shall be surrendered under the provisions of the third section of this Act.

Sec. 5. The third section of the Act to which this is in addition, is hereby repealed.

April 1, 1834.

SEALER OF WEIGHTS AND MEASURES.

1. *Of his Appointment and Qualifications.*—See *Selectmen*, page 178.

II. *Of his general Powers and Duties, and Fees.*

It shall be the duty of each Sealer of Weights and Measures, as soon as appointed and sworn, to receive of the town treasurer, the town standards and seal, and to give him a receipt therefor, expressing the contents thereof, and the condition in which the same may be; and in such receipt engaging, at the expiration of his (the said Sealer's) office, to deliver the same, in like order and condition, to the said treasurer or his order; and such Sealer shall be accountable to the town, for the due preservation of the same, so long as he shall hold them on such receipt.*

And it shall be the duty of the said Sealer of Weights and Measures, in the month of *May* in every year, to post up written notifications in the several parts of the town, expressing therein the time and place, when and where he will attend such of the inhabitants as live within the limits described in his notification, and seal all such of their great and small beams, Weights, and Measures, as they shall bring in for that purpose. And the said Sealer shall be en-

* Stat. 1799, ch. 60. § 5.

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titled to demand and receive, for trying and proving by said town standards, and sealing as aforesaid, *three cents* for each Beam, Weight, and Measure found to be not conformable to said standards, and *one cent and five mills* for each Beam, Weight, and measure found to be conformable thereto. And the said Sealer shall deface and destroy all Weights and Measures which cannot be brought to their just standards.

The said Sealer is authorized and required to go to the houses of such innholders, and to the warehouses, stores, and shops of such merchants, traders, and retailers of spirituous liquors, and authorized to go to the houses of such of the other inhabitants as shall neglect, as aforesaid, to bring or send in the said Beams, Weights, and Measures ; and there (at their said houses, stores, shops, and warehouses) to try, prove and seal the same Beams, Weights and Measures. And the Sealer shall have a right to demand and receive therefor, *four cents* for each and every mile he shall necessarily travel for that purpose, going out and returning home, and double his fees aforesaid, of the owner, to be recovered by action of debt, or on the case, with costs, in any Court proper to try the same.

III. *Penalty for any person who shall refuse or neglect to have his Weights and measures proved ; and also for a Sealer who shall refuse to do his duty.*

If any person or persons shall refuse or neglect to have his, her or their Beams, Weights, or Measures so tried, proved, and sealed, he, she, or they shall forfeit and pay *ten dollars* for each offence ; one moiety to the use of the poor of the town, and the other moiety to the Sealer, to be recovered in an action of debt, with costs, as aforesaid. And if any Sealer of Weights and Measures shall neglect his duty in any of the cases in this Act specified, he shall, for each neglect, forfeit and pay not less than *five* nor more than *ten dollars* ; one moiety thereof to the poor of the town, and the other moiety to the informer, to be recovered by an action of debt, or on the case, with costs.

See further under *Weights and Measures* ; and also under *Town Treasurer*.

SEALERS OF LEATHER.

The Provincial statute of 10 W. III. passed A. D. 1698, provided for the appointment of this officer, and invested him with extensive powers. And his annual election was also provided for by the statute of 1785, ch. 75. But the statute of 1799, ch. 63, which repeals the ancient law respecting the Manufacture of Leather, &c. makes no provision for any such officer, but merely provides that each manufacturer of Leather, or of Boots, Half-Boots, Shoes, Pumps, Sandals, Slippers, or Goloshoes, shall have the exclusive right of stamping said articles, by him or her manufactured, with the initial letter of his or her christian name, and his or her surname at large, and the name of the town of his or her place of abode; and such stamping shall be considered as a warranty that the article stamped is merchantable, being made of good materials and well manufactured.

None of the aforementioned articles shall be considered as merchantable unless stamped as aforesaid.

Any person who shall fraudulently stamp, or aid and abet in fraudulently stamping, either of the articles aforesaid, with the name or stamp of any other person, on due conviction thereof, shall be punished as guilty of a fraud, either by fine, not exceeding *one hundred dollars*, or by imprisonment, not exceeding six months, or by both those punishments, at the discretion of the Court having cognizance thereof.—Stat. 1799. ch. 63.

SURVEYORS OF HIGHWAYS.

*L. Choice of Surveyors; and the penalty for their refusal to serve.**

There shall be chosen two or more suitable persons in each town, at the annual meeting in *March* or *April*,

* The wellbeing of every well-regulated community depends upon the faithful exertions of this important officer, and it is to be regretted that the trust is not oftener committed to men of more fidelity. Of

who shall be denominated Surveyors of Highways, to be notified and sworn in like manner as other officers of the same town; and in case of refusal to serve, shall forfeit and pay the sum of *three pounds*, to the use of such town: *Provided*, no person shall be held and obliged to serve more than one year in three years.§

II. Of the assignment of the Surveyors' Limits.

The selectmen or assessors of each town are authorized, empowered and directed to assign and appoint in writing, annually, to the Surveyors, their several limits and divisions of the highways and town-ways for repair and amendment, unto which the said Surveyors are directed to observe and conform themselves.||

But by a subsequent statute, it is the duty of the *Selectmen* of the several towns *before* the first day of *May*, annually, to assign to the several Surveyors, their divisions and limits for making and repairing the highways.¶

The power of the Surveyor does not result from this

such consequence was this office in the great Roman Empire, that it was held by the most distinguished citizens. And in one instance we find a *Highway Surveyor* (Thermus, the curator of the Flaminian way) a candidate for the consulship with Julius Cæsar. But the general care of the roads was in the *Ædiles*. Indeed much of the glory of that splendid empire resulted from their public ways. They ran in the most direct line from one city to another, with little respect for the obstacles of nature or of private property. Mountains were perforated, and bold arches thrown over the broadest streams. The middle part of the road was raised into a *terrace*, commanding a view of the adjacent country, (hence the name highway.) They were built with strata of sand, gravel and cement, and paved with granite.—Such was their solid construction, that, notwithstanding the ravages of sixteen centuries, the Roman highways still remain among the proudest monuments of antiquity.†

These officers have for a long time existed in England, and are invested with powers by sundry statutes, similar to our own.‡

No part of this country affords greater facilities for this branch of internal improvement than Massachusetts; and it is hoped that our natural advantages will not longer be suffered to lay dormant through sloth, inactivity, or *wasteful parsimony*.

† Gibbon I. 82. Dalton's Justice, ch. 50.

§ Stat. 1786, ch. 81. § 1.

¶ Stat. 1796, ch. 58. § 4.

‡ 1 Bl. Com. 358.

|| *Ibid.* § 2.

act of the selectmen : it merely constitutes him the sole judge of the duty to be performed within his limits ; whereas, if no limits are assigned, it may be necessary for all the Surveyors to act together, or by the voice of the majority of them. The statute being merely directory, their powers do not depend upon its being executed.—*Callender vs. Marsh.*—Mass. Rep. xviii. 426.

III. *Power of towns to make and repair their highways by a money tax ; and also to authorize the Surveyors or others to make contracts for that purpose.*

Towns having a population of eight hundred inhabitants, may vote to raise any sum of money, to be laid out for the making and repairing highways, as they may deem necessary ; and may direct the same to be assessed in money on the polls and rateable estate of the inhabitants, residents, and non-residents of their towns, as other town charges are by law assessed ; and committed to the collector as other town charges are collected and paid ; any law to the contrary notwithstanding.*

Every town may, in town-meeting, authorize their Surveyors, or any other person or persons to enter into contracts for the making and repairing the highways, or any part thereof.†

IV. *Duty of Surveyors to give notice to persons taxed for the support of highways ; and to render to the Selectmen or Assessors a list of such persons as have been deficient in paying or working out their taxes.*

The Surveyor shall give reasonable notice (in writing, if desired) to each person in his list, of the sum he is assessed to the highways and town-ways, and also to the inhabitants within his district, assessed as aforesaid, six days notice (extraordinary casualty excepted) of the times and places he shall appoint for providing materials and labouring ; to the end, each person may have opportunity to work on the highways and town-ways in person, or by his substitute, or with his oxen, horses, cart, and plough, at the rates and prices the town shall affix to such labour,

* Stat. 1818, ch. 121.

† Stat. 1796, ch. 58. § 5.

to the full amount of the sum at which he is assessed ; or he may pay the Surveyor, in money, the sum he is assessed, in which case the Surveyor shall carefully expend the sums thus paid, in labour and materials, for repairing the highways and town-ways in his limits, according to his best discretion.*

And the Surveyor, at the expiration of his term, shall render to the assessors, for the time being, a list of such persons as shall have been deficient (if any such there be) in working out their highway rate ; or otherways paying him the sum assessed therefor ; which deficient sums shall, by the assessors, be put in a distinct column, in the next assessment for the town tax, and collected by the constable or collector thereof, as other town taxes are collected and paid into the town treasury, for the use of the town.†

V. Of the collection of Highway Taxes ; and herein of the duty of Surveyors to account for the same.

Every town may, at their annual meeting, or any meeting warned for that purpose, empower their Surveyors of highways to collect taxes for making and repairing the ways, which shall not be paid in labour or otherwise, within the time limited by law, or such periods as may be agreed upon by such town ; and for that purpose, the assessors shall deliver to them warrants of distress, which shall be in the form prescribed by law, for collecting other town taxes, *mutatis mutandis* ; or they may deliver to the collector or collectors of taxes a warrant for collecting the deficiency in any highway tax, which the collector is empowered and required to levy in the same way and manner as other taxes are by law to be collected, and pay the same over to the Surveyor or Surveyors, who shall be held to account with the selectmen for the expenditure thereof.‡

And if any money shall remain unexpended, in the hands of the Surveyor or Surveyors, after the expiration

* Stat. 1786, ch. 81. § 3.

† *Ibid.*

‡ Stat. 1796, ch. 58. § 5.

of their office, they shall pay the same to the town treasurer.*

And if any surveyor shall neglect to pay over such sums to the said treasurer, on demand, the said treasurer, or his successor in office, shall have power to recover the same, in an action upon the case, with twenty per cent. in addition thereto, to the use of the town, with costs of suit. And if, pending the action, another town treasurer shall be appointed, he, on noting his appearance on the record, shall have power to pursue the same action to final judgment and execution.†

And if any Surveyor, who receives his rate-bill of the Selectmen or Assessors of any town, shall neglect to exhibit the same to them, on the first Monday of July, annually, and also at the expiration of the term for which he shall be appointed, and at those times respectively, to render an account of all moneys that have been expended on the ways, he, for each offence, shall forfeit and pay *twenty dollars*, to be recovered in an action of debt, with costs of suit, by the said treasurer as aforesaid, and to the uses aforesaid.‡

VI. *Power and duty of Surveyors in case towns neglect to raise money for the repair of highways.*

If any town shall neglect to vote or agree upon a sum to be assessed for the express purpose of repairing and amending the highways and town-ways, or shall not otherwise provide for effectually amending and repairing such ways, each Surveyor shall assign to the several persons in his limits, their rateable proportion of days' work, and of cart, team, or plough, according to his real and personal property, as near as he can, and shall assign certain days for amending and repairing the ways, having regard to the season of the year ; and give notice thereof to the persons in his limits, upwards of sixteen years of age, and liable by law to be taxed, six days at least before the time assigned (except in extraordinary cases) to attend the service with suitable tools, and with carts and teams, (if

* Stat. 1796, ch. 58. § 5.

† *Ibid.*

‡ *Ibid.*

any they have;) the notice to be in writing, and delivered the person, or left at his usual place of abode.*

And if any person, being thus notified, shall make default of attending and working, by himself or other sufficient person in his stead, or with his cart and team, as he shall be appointed and assigned, he shall forfeit and pay *five shillings* for each day's neglect; and for default of his cart and team, with a driver, *ten shillings* a day, and in that proportion for a longer or shorter space of time; one moiety to the use of the town, to be expended on the highways and town-ways, as the selectmen shall order, and the other moiety to the use of the Surveyor; to be recovered by complaint, before any Justice in the same county: *provided*, the same be made in one year after the forfeitures are incurred, and not afterwards, according to the form prescribed by the Act.†

And the Surveyor has the same powers if the town vote an *insufficient* sum as if they voted none at all, and is under the same liabilities, as may be seen by construing the 8th with the 11th section of the Act of 1786, ch. 81.—Wood *vs.* Waterville.—Mass. Rep. v. 298. —*vs.* Newbury.—*Ibid.* 299.

In such prosecution the Surveyor may be admitted as a witness, as to the time and manner of notice, and the quantum of labour assigned to the adverse party.‡

And the penalties incurred by servants or minors, shall be recovered of the parents, masters, or guardians, under whose immediate care and control they may then be.

So when any town shall neglect to raise money for the purpose of making and repairing the highways and town-ways, it shall be the duty of the several Surveyors in such towns, to cause so much labour to be done on the said ways (in their respective districts,) before the first day of July, as shall amount to one half at least of the expenses of repairing said ways the year next preceding.§

* Stat. 1786, ch. 81. § 8.

§ Stat. 1796, ch. 58, sect. 4.

† Stat. 1786, ch. 81. § 8.

‡ *Ibid.*

VII. *Power and duty of Surveyors, when the sum assessed for the repair of highways is insufficient.*

When the sum appropriated and assessed for the repair of highways and town-ways, in the limits of any particular Surveyor, shall not fully answer, or be insufficient for that purpose, it shall be lawful for the Surveyor, with the consent of the Selectmen, or the major part of them, where such deficiency happens, to employ such of the inhabitants of the town, upon the repair of the ways in the limits, as shall make up that deficiency ; and the persons thus employed shall be equitably paid out of the town treasury therefor.*

The above principle has been fully recognized by the Supreme Court.—Mass. Rep. v. 294.

A Surveyor of Highways has no authority to repair a way at his own expense, and then to call upon the town for an indemnity. *Jones vs. Lancaster*, 4 Pick. 149.

As where a Surveyor, before his limits were assigned, without consulting the other surveyors, repaired a way, which upon the assignment did not come with his limits, it was held he was without remedy.—*Ibid*.

VIII. *Power and duty of Surveyors relative to incumbrances in Highways, and in repairing roads.*

Surveyors shall have full power and authority to cut down, lop off, dig up, and remove all sorts of trees, bushes, stones, fences, rails, gates, bars, inclosures, or other matter or thing that shall any way straiten, hurt, hinder, or incommode the highway or town-way, and also to dig for stone, gravel, clay, marle, sand, or earth, in any land not planted or inclosed ; and the materials thus dug up, to remove to such place or places in the highways, for the repair and amendment thereof, as they shall determine necessary : *Provided always*, that no Surveyor of highways shall cause any water-course occasioned by the wash of any highway or town-way to be so conveyed by the side of such highway as to incommode any person's house, store, shop, or other building, or to obstruct any

* Stat. 1786, ch. 81. § 4.

person or persons in the prosecution of his or her business or occupation without the approbation and consent of the selectmen of such town or other place, signified in writing, to such Surveyor.*

And any person or persons who may consider him or herself to be aggrieved by such water-course, may complain to the selectmen; and the selectmen, on receiving such complaint, shall proceed to view such water-course so complained of, and after attending to the circumstances of the same, shall, if they think it reasonable, direct such Surveyor to alter the said watercourse in such way and manner as they shall think just and proper.†

And when the highways are blocked up or incumbered with snow, the Surveyors shall forthwith cause so much thereof to be removed, or trod down, as will render the roads passable.‡

So, all such incumbrances may be removed in the manner the same might be done in any town that shall neglect to vote or agree upon a sum for the express purpose of repairing the highways and town-ways; *Provided*, that any town shall [may] agree upon that mode of removing such incumbrances in the month of *March* or *April*, annually; any law to the contrary notwithstanding.||

No Surveyor or other person shall remove or pull down any fence which may be lawfully set up, or erected upon or across any way for the purpose of preventing the spreading of infectious disorders.¶

Surveyors of highways, *as such*, have no authority except as to highways on lands.—*Austin vs. Carter*.—Mass. Rep. i. 231.

In repairing highways, Surveyors have authority to level hills and fill up low places, if the same is necessary for the proper amendment of the roads. If this power is exercised with discretion and not wantonly, the owners of the adjoining lots, or even buildings, have no remedy.—*Callender vs. Marsh*.—Mass. Rep. xviii. 431.

A man who purchases a lot, erects a building, stone wall, or fence upon the borders of the public way, is bound to consider these contingencies for himself, and to

* Stat. 1786, ch. 81. § 4.

¶ Stat. 1796, ch. 58. § 8.

† Ibid.

¶ Ibid. § 11.

‡ Ibid.

resee the changes which public necessity or convenience may require, and avoid or provide against a loss.
-*Ibid.*

IX. *Penalty for Surveyors' neglect of duty.*

Each Surveyor of highways who shall accept the said duty and shall neglect his duty therein, shall forfeit and pay, for each neglect, the sum of *three pounds*; one moiety to him that will prosecute therefor, and the other moiety to the use of the town whereof the delinquent is a Surveyor, to be recovered by action of debt, before any Justice of the Peace for the same county.*

Liability of Surveyors, where a town is indicted for defect of Highways.

In case the Inhabitants of any town shall be fined upon the presentment of the Grand Jury, or upon the information of the Attorney-General, or the person acting for the government in his absence, for a deficiency in the highways, the Surveyor, within whose limits the deficiencies are, shall be liable to refund the same, with all costs, to the said inhabitants, upon an action of the case to be brought therefor. Or the Surveyor of highways may be prosecuted on presentment or information as aforesaid, and fined for any deficiency that may arise in his limits.†
A Surveyor of highways may recover against his town damages happening to him through a defect in the highways within his own district, unless the defect arises from the Surveyor's own neglect.—*Wood vs. Waterville.*—Mass. Rep. iv. 422.

And the inhabitants of any town, merely as such, shall not be excluded from being witnesses, upon any prosecutions upon this statute, upon a supposition of being interested as members of the corporation.‡

* Stat. 1796, ch. 58. § 10.

† *Ibid.* § 11.

‡ *Ibid.*

SURVEYORS OF LUMBER
AND
VIEWSERS AND CULLERS OF STAVES AND
HOOPS.

I. *Of their choice, qualifications, and penalty for not serving.*

THERE shall be one or more suitable persons elected in every town and district in this commonwealth, at their annual meeting in the month of *March*, [or *April*,] to be Surveyors and Measurers of boards, plank, timber, and slit-work, and Surveyors of shingles, clapboards, staves, and hoops, who shall be sworn to the faithful performance of the trust reposed in them.*

And in each maritime town in this Commonwealth, from whence staves or hoops are usually exported beyond sea, there shall be two or more suitable persons chosen by such towns, at their annual meeting in *March*, [or *April*,] to be Viewers and Cullers of staves and hoops, who shall be under oath faithfully to discharge the duties of their office.†

If any person or persons who shall be duly chosen to serve as a surveyor of boards, clapboards, or shingles, or as a Culler of staves or hoops, shall refuse or neglect to take the oath for the faithful discharge of the office, or to serve therein, every such person or persons shall pay the sum of *twenty shillings*, to the use of the poor of the town choosing such person or persons, and every such town shall proceed to the choice of other or others, in the room of any person so neglecting, and so, until the office is filled.‡

II. *Of the general powers and duties of these officers; and what Lumber may be lawfully sold in this state.*

1. As to Boards, Plank, Timber, or Slit-Work, offered for sale.

All boards, plank, timber, or slit-work, offered for sale shall, previous thereto, be surveyed, and also measured, by one of the said Surveyors, where he shall have any doubt of the measure, having due consideration for drying

* Stat. 1783, ch. 15. § 1.

† Stat. 1783, ch. 15. § 4.

‡ Ibid. § 9.

shrinking; who shall also mark anew all such to the contents thereof, making reasonable allowance for knots, and splits.*

3. Of Shingles.

Shingles shall be split cross-ways the grain, and be *fifteen inches* [fifteen inches†] long, unless those made for home use. Pine shingles shall be free from sap, and shingles shall be free from shakes and worm-holes, shall be half an inch thick at the butt end, when green, full three eighths of an inch when thoroughly seasoned, for exportation to a foreign market; and not less than third of an inch thick at the butt when fully seasoned, for home use; and *four inches and a half* [four inches] wide on an average, and none less than three inches wide, and shall hold their width three fourths the way to the thin end, and be well *shaved* [or sawed;‡] and each bundle shall contain two hundred and fifty shingles; if bound in square bundles, shall contain twenty-five courses, and measure twenty-two inches and a half at the

And in case there shall be more than five shingles in any one bundle that are under the above length, breadth or thickness, or five short in the tale of any one bundle of two hundred and fifty the bundle which is so deficient, or in which such shingles are contained, shall be forfeited, and the shingles in each bundle which are not merchantable, shall be burnt, and the residue sold, and the money arising from the sale shall be paid into the hands of the town treasurer, for the benefit of the poor of such town where the shingles are condemned, first deducting therefrom the charge of culling and surveying.§

An additional statute makes some further provisions on this subject as follows:—

Shingles made in any town of, or offered for sale in this Commonwealth, may be from fifteen to eighteen inches in length, and may be sawed or shaved, and may be bound in bundles of one thousand or half thousand, and the qual-

* Stat. 1783, ch. 15. § 1.

† Act of Feb. 1825.

‡ Act of Feb. 1825.

§ Stat. 1783, ch. 15. § 3.

ity of shingles shall be designated by numbers one, two, three, and refuse.

The Surveyor of shingles shall use his best skill and judgment in affixing their qualities, in addition to affixing the town brand, and shall likewise brand each bundle with his own name, and the number designating the quality; and all shingles branded numbers one or two, whether made of pine, spruce or cedar, shall be free of sap.—Stat. 1824, ch. 136.

4. Of Pine Clapboards.

All pine clapboards that shall be exposed to sale, shall be made of good sound timber, clear of sap; and all clapboards shall be free from shakes and worm-holes, and of the following dimensions, *viz.* Full five eighths of an inch on the back, or thickest part, five inches wide, and four feet six inches long; and they shall be straight and well shaved.

5. Of Staves.

All white oak butt staves shall be at least five feet in length, five inches wide, and one inch and a quarter thick on the heart, or thinnest edge, and every part thereof.

All white oak pipe staves shall be at least four feet and eight inches in length, four inches broad in the narrowest part, and not less than three quarters of an inch thick on the heart, or thinnest edge.

All white oak hogshead staves shall be at least forty-two inches long, and not less than half an inch thick on the heart, or thinnest edge.

All white oak barrel staves, for a foreign market, shall be thirty-two inches long; and for home use shall be thirty inches long; and all shall be half an inch thick on the heart, or thinnest edge.

All white oak hogshead and barrel staves shall be at least, one with another, four inches in breadth, and none less than three inches in breadth, in the narrowest part; and those of the breadth last mentioned shall be clear of sap.

All red oak hogshead and barrel staves shall be of the same length, width and thickness, with the white oak

hogshead and barrel staves above mentioned. And all staves shall be well and proportionably split.

6. Of Hoops.

All hogshead hoops that shall be exposed to sale, or exported, shall be from ten to thirteen feet in length, and shall be made of white oak or walnut, and of good and sufficient substance, well shaved; those made of oak shall be not less than one inch broad at the least end, and those made of walnut shall be not less than three quarters of an inch broad at the least end; each bundle shall consist of thirty hoops; and all hoops of ten, twelve and thirteen feet respectively, shall be made up in distinct bundles by themselves; and if any hoops are packed of less dimensions than those prescribed by this law or if any bundle shall contain less than thirty hoops, such bundle shall be forfeited and sold for the benefit of the poor of the town where it is offered for sale.

III. *Duties as to furnishing certificates to Masters of Vessels, and of sealing and branding Bands of Hoops, culled and surveyed for exportation.*

All staves that shall be exported from this Commonwealth beyond sea, shall be first culled; and all hoops first viewed and surveyed by one of the officers aforesaid, and a certificate given by the culler or surveyor, to the master or commander of the ship or vessel on board which they are laden, of the quantity by him so culled or surveyed; and the bands with which the bundles of hoops are bound shall be sealed with the brand of the town from whence they are exported; and that all shingles and clapboards that shall be exported beyond sea, shall likewise be certified by one of the surveyors already required by law to be chosen in each maritime town within this Commonwealth, to have been by him surveyed, viewed, and approved, and the number or quantity thereof; and any sellers of boards, staves, hoops, clapboards or shingles, that shall deliver any of the said articles before they are culled or surveyed, shall forfeit the sum of *twelve shillings* per thousand; and any person purchas-

ing any of the articles before mentioned, and who shall receive them before they are culled or surveyed, shall forfeit and pay the sum of *twelve shillings* per thousand; one half to the informer who shall sue for the same.

IV. *Of the Fees of Cullers of Hoops and Staves.*

They shall be allowed for their time and service as follows, *viz.*—*one shilling and eight pence* per thousand for barrel staves, *two shillings* per thousand for hoghead staves, *two shillings and four pence* per thousand for pipe staves, and *two shillings and eight pence* per thousand for butt staves, as well refuse as merchantable, the merchantable to be paid for by the buyer, the refuse by the seller; and the culler shall be allowed *three shillings* per thousand for hoops.

V. *Of the Duties of Custom-House Officers as to the export of Lumber.*

The Act of Congress of 1799, ch. 128. sec. 93, provides that all Officers of the Customs shall pay due regard to the inspection laws of the several States, so that no vessel having on board goods liable to inspection shall be cleared out until the master or other proper person shall have produced a certificate that all such goods have been duly inspected.

VI. *Penalties for shipping Lumber not having been inspected.*

If any person shall presume to ship off any boards, staves, hoops, clapboards or shingles, unless the same shall first have been culled or surveyed, and marked by a sworn Culler or Surveyor as aforesaid, he shall forfeit and pay the sum of *twelve shillings* per thousand, to be reckoned by feet or tale, according as the articles are usually sold; to be disposed of, one half to the poor of the town where the offence is committed, and the other half to the Surveyor, or any other person or persons who shall sue for the same, which he or they are hereby enabled to do by action, bill, plaint or information, in any

court proper to try the same, or before any Justice of the Peace, if the forfeiture does not exceed *forty shillings*.*

VII. *Penalty for a Culler or Surveyor who shall connive at any breaches of the law.*

In case any Culler or Surveyor shall connive at or allow of the breach of this Act, or shall be guilty of any fraud or deceit in surveying or culling of boards, staves, hoops, clapboards, or shingles, he shall forfeit and pay the sum of *ten pounds* for each offence; and in case of his refusal to attend the aforesaid service, when he shall be thereto requested, he shall forfeit and pay the sum of *twenty shillings*; the forfeitures and penalties in such cases to be recovered and disposed of as aforesaid.

VIII. *Of the effect of a Contract for the delivery of Lumber not answering the provisions of law.*

No action can be maintained on a promissory note, the consideration of which was the sale of shingles of a quality not authorized by the statute.—*Wheeler vs. Russell*.—Mass. Rep. xvii. 258.

INSPECTORS OF LIME.

I. *Of the choice of Inspectors.*

In every town where lime is imported by water, at any annual meeting there may be chosen one or more inspectors of lime, who may at the expense of the purchasers, inspect all lime imported into, or sold in their respective towns or harbours; and such inspectors shall have a right to demand and receive of the purchaser four cents for every cask of lime so inspected.—Stat. 1809, ch. 62. § 5.

In every town where lime is manufactured there shall be chosen, at the annual meeting in March or April, one or more inspectors, whose duty it shall be to inspect all

* Stat. 1783, ch. 15.

lime manufactured in said town, at the time it is filled at the kiln, and brand the cask into which the same is put, with the word "Inspected," and the first letter of his christian name, and his surname at length, with the name of the town and he shall receive from the manufacturer or owner of said lime, five cents for each cask so inspected and branded.—Ibid. § 6.

Inspectors under this act are to be sworn.—Ibid. § 9.

II. *In what manner Lime may be sold.*

No stone lime manufactured in the State, shall be sold, exposed to sale, or shipped on board any vessel in casks, but such only as shall be well burnt and pure, and contained in good and sufficient new casks, to contain either fifty or one hundred gallons each, made of well seasoned staves and heads, with ten good and sufficient hoops, well driven and secured with nails or pins.—Ibid. § 1.

But it is lawful to retail lime by the bushel, or any other quantity but not in casks.—§ 11.

III. *Penalties for violations of the act.*

If any person shall sell or expose to sale, or ship or receive on board any vessel, in casks, other than as aforesaid, and having the brands required by law, he shall forfeit all such lime, and shall moreover incur a fine of one dollar and fifty cents, for every cask of lime so sold, one half to the town, and the other half to him who shall sue for the same. The like sum shall be forfeited by any person who shall shift the contents of any branded cask, and put into it, other lime, with the intent to sell the same.

IV. *Penalties how recovered.*

The forfeitures under this act, may be recovered by action of debt. Upon information given to any Justice of the Peace, he shall issue a warrant directed to any proper officer, who shall seize any lime not made and marked as aforesaid and to secure the same for trial.—Ibid. § 7.

The mode of proceeding, with articles seized, is provided for by statute.—Stat. 1793, ch. 43.

Inspectors of beef; of butter; of gun powder; of hops; of lard; of nails; of pickled and smoked fish; of pork; of pot and pearl ashes; are all appointed by the Governors, having duties specially pointed out by sundry acts of the Government, but not being Town Officers, are not enumerated in this work.

SURVEYORS AND CULLERS OF DRY FISH.

There shall be annually chosen in every seaport town, where fish is made and cured or sold, at the annual March meeting, a suitable number of skilful and disinterested persons, inhabitants of said towns, to be cullers of Fish; and any person who shall cull any fish without being first chosen and sworn, shall forfeit *five pounds* for every quintal of fish by him culled; and such Cullers shall have regard to the contract between the buyer and seller, with respect to the season of the year when such fish is cured.

Every master of a vessel who shall take on board any fish for exportation, without first having them surveyed or culled by a sworn culler, shall forfeit *six shillings* for every quintal of fish so taken on board.

Every culler, before he enters on the duties of his office, shall be sworn to the faithful discharge of his trust, and shall be paid *one penny half penny*, by the purchaser, for every quintal he shall survey or cull.

When it shall so happen that the sworn Cullers cannot be obtained, it shall be lawful for the buyer and seller to agree upon some meet person to be culler in such case: *Provided* he be first sworn faithfully to discharge his trust.—Stat. 1784, ch. 31.

All pickled fish, and dried or smoked herrings, are subject to the inspector of fish, who is not a town officer.—Stat. 1807, ch. 54, and Stat. 1817, ch. 34.

TOWN CLERK.

1. *Of his choice and qualification.*

The freeholders and other inhabitants qualified to vote for town officers shall, in the month of March or April,

annually, meet, and, by a major vote, choose a clerk (who shall be under oath truly to record all votes passed in such and other town-meetings during the year, and until another Clerk shall be chosen and sworn in his stead, and also faithfully to discharge all the other duties of his said office.*).

The oath to the Clerk is to be administered by a Justice of the Peace, if any is present, otherwise by the Moderator, in open town-meeting.†

II. *Of his powers in the choice of Moderator.*

The election of moderator of all town-meetings for the choice of town officers (excepting in the town of Boston,) of Town Clerks, Selectmen, and Assessors, shall be by written ballots, and during the election of moderator for any town-meeting, the town Clerk shall preside, and shall have all the powers, and do all the duties which the moderator of a town-meeting now by law has and does perform.‡

This power was independent of the above statute, because as it was his duty to record the choice of moderator, he could not duly execute it, unless he should first sort and count the votes.—Mass. Rep. ix. 262.

III. *Of his duty in notifying town officers of their election, and of administering to them the oaths of office.*

At the annual town-meeting, the Town Clerk, or two of the Selectmen, shall forthwith make out a list of the names of all those who shall be then chosen into office, of whom an oath is by law required, and deliver the same to some constable or constables of the same town, together with a warrant to him or them directed, who is hereby required, within three days after receiving such warrant, to notify and summon each of the said persons to appear before the Town Clerk within seven days from the time of such notice, to take the oath by law prescribed to the office into which they are severally chosen; and every person who shall neglect to appear before the town clerk, within the said seven days, and take the oath of office

* Stat. 1785, ch. 75. § 1. † Ibid. § 6. ‡ Stat. 1811, ch. 9. § 2.

unto which he is chosen and summoned as aforesaid, which oath the town clerk is hereby authorized to administer (unless such person is by law exempted from serving in the office) shall forfeit and pay to him or them that will inform or prosecute therefor, the sum of *thirty shillings*, except constables and such other officers, for whose neglect a different penalty is provided; two thirds for the use of the town, and the other third to the use of the prosecutor: *Provided always*, that any person who shall take the oath of office before a Justice of the Peace, and file a certificate thereof with the town clerk within the said ten days, shall be exempted from the said fine; and every constable shall, at the expiration of the term of ten days from the time of receiving such warrant, make a return into the clerk's office of the same town, of the warrant to him committed as aforesaid, with his doings thereon; for a neglect of which he shall forfeit and pay the sum of *forty shillings*, to be to the use of the town.

And the Town Clerk shall make a record of such persons as shall, from time to time, be sworn into office before him, or of such as shall file certificates of their being sworn as aforesaid.

Particular care should be taken that the records of the oaths should shew these facts clearly and distinctly, as town officers cannot lawfully execute the duties of their offices until they are duly sworn; and pains should be taken to have certificates of the oaths made by the moderator or Justice of the Peace filed among the papers of the corporation.—Mass. Rep. xi. 481.

It is true that the Clerk may in some instances amend his record, *while in office*; but he acts at his peril as to the truth of his amendments.—*Ibid.*

Whether the Moderator or Justice of the Peace, not being certifying officers, can afterwards aid by their testimony the defects of the record, is not determined.*—*Ibid.*

* The administration of an oath is a solemn religious act, and ought upon no occasion to be given or received with levity or irreverence.—A custom formerly prevailed in many towns, of *qualifying* their town officers at some place of public resort, in the evening of March meet-

IV. *Duty in elections of State Officers.*

1. As to Governor and Lieutenant-Governor.

It shall be the duty of the Selectmen and clerks of the several towns and districts to make and seal up a separate list of the persons voted for as governor, lieutenant-governor, counsellors and senators, and representatives in congress, and transmit the same to the secretary of the Commonwealth or to the sheriffs of their respective counties.—Stat. 1833. ch. 141.

2. As to Counsellors and Senators.

It shall further be the duty of the several Selectmen and Clerks, to make and seal up a separate list of the persons voted for as Counsellors and Senators, and transmit the same to the Secretary of the Commonwealth, or to the sheriffs of their respective counties. And when the said lists shall be received at the office of the secretary, the seals thereof shall not be broken; but the same shall be safely kept entire, as they were received, until delivered by him to the Governor and Council, or to the executive authority of the Commonwealth, for the time being, to be by them examined agreeably to the Constitution.

Every Town Clerk present at any meeting for the choice of Governor, Lieutenant-Governor, Counsellors, and Senators, who shall neglect or refuse to make a fair record of the votes, or a fair copy of such record, or to attest the same, or who shall neglect or refuse to make due and seasonable return thereof to the sheriff of the county, or into the Secretary's office of the Commonwealth, shall forfeit a sum not exceeding *eighty dollars*, nor less than *forty dollars*, for each offence.*

3. As to Representatives to Congress.

These returns are to be sealed up and transmitted to the sheriff of the county within three days next after

ing. This was a subject of regret by the good, and of animadversion by the wise. And we believe the practice has been generally abolished. In many towns it is usual to *swear* the officers in town-meeting, as they are chosen; order is introduced, attention is arrested, and the scene is calculated to make a permanent impression.

* Stat. 1795, ch. 85, § 2.

the day of such election, and the said sheriff shall transmit the same to the secretary of the Commonwealth, within seven days thereafter; or the Selectmen may themselves transmit the same to the said secretary, within ten days after the day of such election. Stat. 1833, ch. 68. § 3.

4. As to Representatives to the General Court.

The votes are to be received by the Selectmen, and the Clerk is to record the whole number of votes given in, and for whom they were given.

The penalty for the Town Clerk who shall refuse or neglect his duty to the prejudice of the rights of the Electors in the choice of Representatives, shall forfeit not less than *forty* nor more than *eighty dollars*.

V. Of his Duties in the solemnization of Marriages.

1. To publish Intentions of Marriage, and grant Certificates therefor.

All persons desiring to be joined in marriage, shall have such their intentions published at three public religious meetings, on different days, at three days' distance exclusively from each other, in the town wherein they respectively dwell; or shall have their intentions of marriage posted up by the clerk of such town, by the space of fourteen days, in some public place, within the same town, fairly written; and shall also produce to the Justice or minister, who shall be desired to marry them, a certificate of such publishment, under the hand of the Clerk of such town; and also, that the intention of marriage hath been entered with him fourteen days prior to the date of such certificate.*

In case the parties or either of them live in a town or place where there shall be no Clerk, then publishment shall be made in the town adjoining, in manner aforesaid; and a certificate from the Clerk of the same town, of such publishment, and of the entry of their intentions of marriage as aforesaid, shall be produced as aforesaid, previous to their marriage.

Where a male under twenty-one years, or a female un-

* Stat. 1786, ch. 3. § 3.

der eighteen years of age, is to be married, the consent of the parent, gurdian or other person, whose immediate care and government such party is under, if within the Commonwealth, shall be first had to such marriage.

Any person not authorized, who shall deface or pull down any such publishment, shall forfeit *twenty shillings*; and if unable to pay the fine, shall be set in the stocks for the space of one hour.*

2. Of his duty when the Banns are forbidden.

If at any time the banns of matrimony betwixt any persons shall be forbidden, and the reasons thereof assigned, in writing, by the person so forbidding the same, left with the Town Clerk, he shall forbear issuing a certificate as aforesaid, until the matter shall have been duly inquired into, and determined before two Justices of the same county, *quorum unus*: *Provided* the person forbidding the banns shall, within seven days after filing the reasons as aforesaid, apply unto two Justices as aforesaid, and procure their determination thereon; unless the said Justices shall certify unto the said Clerk that a further time is necessary for their determination on the reasons filed; in which case the Clerk shall forbear issuing a certificate until the time then certified to be necessary shall expire, unless the Justices shall sooner determine; according to whose determination the Clerk shall govern himself herein; and if the said Justices shall determine that the reasons assigned by the person forbidding the said banns were not supported by the laws of the Commonwealth, then the person so forbidding shall pay all the cost that may have arisen in consequence of such objection; and the said Justices shall make up judgment and issue execution accordingly.†

3. Of their duty in recording Marriages.

Every Justice and minister shall make and keep a particular record of all marriages solemnized before them respectively; and in the month of *April*, yearly, shall make a return to the Clerk of the town in which he lives, certifying the names (both christian names and sur-

* Stat 1786, ch. 3. § 5.

† *Ibid.*

names) of all the persons who have been by them respectively joined together in marriage within the year then last past, if any such by them have been so joined together. And if any Justice or minister shall neglect to make such return, within the month of *April*, annually, the Clerk of the town where such delinquent Justice or minister lives, shall, without delay, certify such neglect to the Clerk of the Court of Sessions of the same county, who shall lay the same before the said Court at their next session; and the person so neglecting shall be cited to appear before the said Court, to answer for such neglect; and if no sufficient reason shall be assigned therefor, he shall be considered and adjudged disqualified for joining persons in marriage for a term of time, not exceeding ten years, at the discretion of the Justices of the said Court.* And every Town Clerk shall duly and seasonably record all marriages, so certified to him.

4. Of marriages solemnized by Ministers in towns where they do not reside.

Every stated ordained minister of the gospel is authorized to solemnize marriages when either of the persons to be married belongs to the parish or congregation of such minister, although the person about to be married shall reside without the limits of the town or parish where such minister may be settled; and such marriage may be had in the town or parish where such minister or either of the parties shall dwell.

Whenever any persons who may lawfully enter into the marriage state, shall belong to, or be resident in a town in which there shall be no stated ordained minister of the gospel, of the sect or denomination to which such persons, or either of them belong; it shall and may be lawful for any settled ordained minister of the sect or denomination to which such persons or either of them belong, residing in any other town within this Commonwealth, to solemnize marriage between such persons, within the town where they or either of them reside, the certificate of which marriage shall be filed with the Clerk of the town where said marriage shall be solemnized; and the duties of ministers and Town Clerks, in relation to certificates of marriage

* Stat. 1786, ch. 3. § 6.

solemnized under the provision of this Act, and the penalties for the neglect thereof, shall be the same as are provided in the Act, entitled an act for the orderly solemnization of marriages.*

VI. *To record Births and Deaths ; and herein of the duty of certain persons to give information.*

It shall be the duty of every Town Clerk to record all births and deaths which shall happen within such town, and come to his knowledge, together with the time of such birth or death, and the names of his or her parents, if known, for the fees allowed by law, to be paid by his town.†

It shall be the duty of parents to give notice to the Clerk of the town in which they dwell, of all the births and deaths of their children ; and it shall be the duty of every householder to give notice of every birth and death which may happen in his house ; and of the eldest person next of kin to give such notice of the death of his kindred ; and it shall be the duty of the master or keeper of any alms-house, work-house, or prison, and of the master or commander of any ship or vessel, to give notice of every birth and death which may happen in the house or vessel under his care or charge, to the Clerk of the town in which such events shall happen. And in case any person, whose duty it shall be to give notice as aforesaid, shall neglect to perform the same, for the space of six months after the birth or death shall happen, the person so neglecting, shall pay a fine of *one dollar* ; to be recovered with costs of suit on complaint before any Justice of the Peace for the same county, to the use of any inhabitant of the same town, who shall prosecute for the same ; from which judgment there shall be no appeal.—Stat. 1795, ch. 60.

VII. *Duty as to the finding of lost Goods and Stray Beasts.*

1. Duty of Finder of Money or Goods to give notice.

Whoever shall find any money or goods lost, of the value of one dollar or upwards, whereof the owner is unknown, the finder shall, within ten days next following, at the furthest, give notice, in writing, to the Clerk of the

* Stat. 1820, ch. 56.

† Stat. 1795, ch. 69.

in which they are found, and pay him twenty-five
 for making an entry thereof in a book to be kept by
 for that purpose, and for procuring the same to be
 filed with the register of Deeds for the same county.
 The finder shall also cause a notification thereof to be
 posted up in some public place within the same town, and
 shall cause the same to be publicly cried therein, on
 several days, provided there shall be any public
 in said town. And if the money or goods so found
 be of the value of *forty shillings*, or upwards, then to be
 as aforesaid, and notice thereof posted up in like
 manner, in the same, and the two next adjoining towns,
 one month next after such finding.*

of persons who shall find and take up any stray Beasts, ex-
 cept Horses, of a value not exceeding twenty dollars.

Every person who shall find and take up any stray beast,
 shall cause the same to be entered, with the colour and
 , natural and artificial, and also to be posted up and
 in a manner and time as aforesaid; and likewise, with-
 in days, put, and from time to time keep a watch about
 such stray beast (sheep only excepted from
 withed) on pain of losing all his charges about it
 lands. And such finder of lost goods or stray beast,
 also, within two months, and before any use or im-
 mement thereof is made to its disadvantage, procure
 the Town Clerk or a Justice of the Peace a warrant,
 addressed to two such disinterested judicious persons as
 the clerk or Justice shall appoint, returnable into the
 Clerk's office in seven days from the date, to ap-
 praise and value the goods or stray beast upon oath, at
 the value thereof in money, according to their best
 judgment, and to administer an oath unto them for that
 use accordingly; which warrant and oath the Clerk
 and Justice are hereby authorized to issue and adminis-

3. Proceedings if owner appears.

the owner of any such lost money, goods, or stray
 appear within one year and a day next after such

* Stat. 1788, ch. 55. § 1.

notice of the finding given to the Town Clerk as aforesaid, and make out his right and title thereunto, he shall have restitution of the same, or the full value thereof, allowing and paying *three pence* for each time it was cried; and the money paid for entering the same as aforesaid, together with such necessary charges as shall have arisen in keeping, notifying, appraising, and necessary travel respecting, the business, to be liquidated and adjusted by some Justice of the Peace of the same county, in case of disagreement between the owner and finder.

4. How to be disposed of, if no owner appears.

If no owner appear within one year and a day as aforesaid, then such strays, lost money or goods, shall be and remain to the finder, he paying one half the value thereof (all necessary charges being first deducted) according to appraisement, unto the treasurer of such town, for the use of the poor thereof, and to be recovered by the town treasurer (upon neglect or refusal to pay the same) as in other cases.

5. Duty of Town Clerk to transmit to the Registry of Deeds a copy of all entries of lost goods, &c. by him made.

The Town Clerk shall once every two months transmit to the Register of deeds in the county where he lives, an authentic copy under his hand of all entries that shall be made with him of lost money, goods, or strays, excepting all such lost goods or strays as shall be delivered to the owner thereof, within the said two months, and shall pay to the Register *six pence* for each copy of an entry transmitted to him as aforesaid; and the Register shall keep a book, wherein he shall record all entries transmitted by the Town Clerk as aforesaid, and give out copies of the same when desired, at the price of *six pence* for each copy, and for searching such record, shall be allowed *two pence*, and no more.

6. Penalty for neglect of Town Clerk.

If any Town Clerk or Register shall neglect or fail of doing his duty, as by this Act is provided and directed, their respective fees being paid, or tendered unto them as is in this Act mentioned, he shall for every such neglect, forfeit and pay the sum of *forty shillings*; one half to

the use of the county, and the other half to the use of him or them that will prosecute and sue therefor.,

7. Penalty for neglect of finder.

If any finder of any lost goods, money, or stray beasts, of the value of *six shillings*, or upwards, shall neglect to cause the same to be entered, cried, or posted up in manner and time, as before directed, or to withe such stray beasts, he shall forfeit and pay the full value of such goods, money, or stray beast, one half to the use of the county, and the other half to him or them that will prosecute and sue for the same. And if any owner of any stray beast, or other person, shall take off the withe from the same, or take away such stray beast before all the necessary charges arisen, for entering, crying, notifying, keeping, and apprising thereof be defrayed, such person so offending shall forfeit and pay unto the finder of such stray beast, the full value of the same.

8. Proceedings as to stray Horses, of a value less than twenty dollars.

By an additional Act passed in 1815, it is provided that any person who shall find and take up any horse or horse kind, as a stray, and shall have procured the same to be appraised, agreeably to the provisions of the Act, entitled an Act respecting lost goods and stray beasts, in case the same shall be appraised at a sum not exceeding twenty dollars, shall, at the expiration of two months after such appraisal, proceed to sell the same at public vendue, having given four days previous notice of the time and place of sale; and shall pay over the money for which such horse may be sold, to the treasurer of the town in which he lives, after deducting therefrom the expenses of taking up, posting, and appraising such horse as provided for in the Act to which this is in addition, with *one dollar* for his fee in selling such horse.

The owner of such horse, so taken up and sold, shall be entitled to receive the money so deposited with the Town Treasurer, provided he shall apply for the same within the space of one year after the same shall have been paid to the treasurer aforesaid; and in case the owner of such horse shall neglect to apply for such money for

the term of one year, the same shall be appropriated as is provided by the Act to which this is in addition.

No person, from the fifteenth day of *April* to the first day of *November*, shall take up any horse, gelding, mare or other beast for a stray, unless such beast be taken damage feasant in some inclosure, and impounded for that or some other sufficient cause.*

Perhaps the law is otherwise in other towns where it is voted that horses, &c. shall not run at large.

VIII. *Of the power of Town Clerks to administer Oaths to Appraisers, &c. and to issue Subpœnas for Witnesses.*

In all cases where the appraisers, commissioners or dividers, appointed by the Judge of Probate to perform any service respecting the estate of any person deceased, or persons appointed to set off the widow's dower therein, and are by law directed to be under oath, or sworn by the Judge of Probate, they may be sworn before a Justice of the Peace; and in case there be no Justice of the Peace in the same town, they may be sworn before the Town Clerk; a certificate of such oath to be returned to the Probate office from whence the warrant or commission appointing them issued.†

When a minor above the age of fourteen years, living more than ten miles distant from the Judge of Probate's dwelling-house, shall choose a guardian, such minor may have that choice certified to the Judge by any Justice of the Peace in the same county, or by the Town Clerk, if no Justice shall dwell in such town, which choice so certified shall be deemed as good and valid as if done in the said Judge's presence.‡

They also have power to grant subpœnas for witnesses in civil causes.§

IX. *Fees of Town Clerks.*

To the Town Clerk for publishing the banns of matrimony, recording the same, giving a certificate of the pub-

* Stat. 1788, ch. 55. § 6.

† Stat. 1783, ch. 33. § 14, & 1817, ch. 109. § 27.

‡ Stat. 1783, ch. 38. § 1.

§ Stat. 1784, ch. 38. § 5.

lishment, and recording the marriage upon receiving the Justices' or minister's certificate thereof, *fifty cents*; to be paid by the man published, on receiving a certificate of the publishment.

And the Town Clerk shall not in future be holden to return certificates of marriages to the Clerks of the Courts of Sessions, nor Clerks last mentioned, to record the same.

To the Town Clerk for recording births and deaths, *eight cents* each. For a certificate of a birth or death, *ten cents*.

For a subpoena for one or more witness, *ten cents*.

For swearing commissioners and appraisers with certificates of the same, *twenty cents*.

For recording deeds, and for copies, *twelve cents* a page.

A page in the bill is two hundred and twenty-four words.

X. *His duty to mortgages of personal property.*

It shall be the duty of Town Clerks upon payment of their fees, to record mortgages of personal property, in a book to be by them respectively kept for that purpose, with the time when the same are received and recorded; and the fees of said Clerks for recording such mortgages, and for certifying the time when, and the book and page where, the same may be recorded, for making and certifying copies and for entering discharges, shall be the same, as are now by law allowed to registers of deeds for similar services.—Stat. 1832. ch. 157. § 2.

TOWN TREASURER.

1. *Of his Choice.*

Town Treasurers are to be chosen as other town officers, in *March* or *April*.*

* By the Provincial statute of 11 William III. ch. 66, A. D. 1699, the choice of this officer is provided for, and his duties set forth, viz.—
“The several towns shall choose a suitable person to be Treasurer of

II. *Of his Powers in relation to the Collection of Taxes in general.*

III. *Of his Powers when authorized to act as Collector—*
See Collector, page 82.

IV. *Power to prosecute for Injuries to Public Buildings.*

When any trespasses shall be committed on any buildings or inclosures belonging to any county, town, or parish, the county, town and parish treasurer, for the time being, shall be and hereby are severally authorized to sue for the damage done to the public buildings or inclosures of their county, town or parish, respectively; and where and public buildings are owned partly by the town and partly by the county, in that case, the county or town treasurer, whoever may first institute an action, may prosecute for damages thus sustained: *Provided* that nothing herein shall prohibit any surveyor of highways moving any incumbrances in any public way, nor be construed to prevent any prosecution for theft, where a theft is committed.*

V. *Power to sue obligations made to his predecessors.*

The treasurer of towns, parishes and other corporations, for the time being, be and hereby are authorized and empowered, in their own names and capacities, respectively, to commence and prosecute to final judgment and execution, any suit or suits at law, upon any bonds,

such town, who shall be sworn before a Justice of the Peace to the true, and faithful discharge of his trust; and such Treasurer shall, and hereby is empowered to demand and receive all debts, rents, and dues belonging or owing to such town or the poor thereof, and to sue for and recover the same in due process in the law, and shall pay out such monies, according to order, from the selectmen or overseers of the poor, pursuant to such instructions as they shall receive from the town; and every such Treasurer shall make and render a true account to the town of all his receipts and payments, and shall have such allowance for his services as shall be agreed and ordered by the town."

This Act never having been repealed or altered by the legislature since the adoption of the Constitution, perhaps is now in force.

* Stat. 1785, ch. 28. § 4.

notes, or other securities which have been or shall be given to them or their predecessors in said capacity; and to prosecute to final judgment and execution any suits which have been or shall be commenced by their predecessors in said capacity, during their continuance in office, and pending at the time of their removal therefrom.*

VI. *Power to collect fines and forfeitures due to the town, or the poor thereof.*

By sundry laws, fines are forfeited in whole or in part to the town, or to the poor of the town. No statute passed since the revolution, directs the mode of prosecuting for these penalties. By the Statute of William III. referred to upon the foregoing page, it will be seen that extensive powers are conferred upon Town Treasurers for these purposes.

When any person chosen to the office of Constable shall neglect to be sworn, or to pay the fine for non-acceptance of the office, the treasurer shall cause such person to be summoned before the Court of Common Pleas, or other proper tribunal to shew cause why he should not pay the fine, and upon default, the court shall attach the defendant by distress of his goods, or arrest of his body. —Stat. 1785, ch. 75. § 3.

So in case any person shall disobey the moderator of any town or parish meeting, or shall persist in disorderly behaviour, he shall forfeit a penalty to be recovered in the same manner, upon complaint of the Treasurer before a Justice of the Peace. Ibid. sect. 6.

When any personal property shall be liable to forfeiture for any offence,† any person entitled thereto or interested therein in whole or in part, may seize and keep the same, till a final decree be had thereon, unless the owner claiming the same shall give bond to the party seizing, to pay the appraised value of such property, if upon a final decree, the property shall be adjudged forfeited. If no claimant appears, there must be an inventory and appraisement; Justices of the Peace have power to

* Stat. 1797, ch. 14.—Stat. 1831, ch. 62. † Stat. 1796, ch. 67. ex. gr.

try the libel, if from the small amount of property, the case shall be within their jurisdiction.—Stat. 1793, ch. 43.

VII. *Duty to provide and keep standard Weights and Measures.*

It shall be the duty of the treasurer of each town within this Commonwealth, at the expense of such town, to procure, and ever after to preserve as town standards, a complete set of the beams, weights, and copper or pewter measures, (wooden half bushel, peck and half-peck—See Stat. of 1800, ch. 54,) conformable to the State standards as aforesaid; excepting however the said *bushel measures*; and excepting also, that no treasurer of any town shall be bound to procure a nest of Troy weights other than from the lowest denomination to the size of eight ounces, which it is hereby made his duty to procure; all of which he shall cause to be well tried, proved, and sealed as aforesaid, either by the treasurer of this Commonwealth or of the county within which such town shall be situated, and to have the same tried, proved and sealed as aforesaid, once in every ten years afterwards. And the State or county treasurer shall be entitled to demand and receive of each town treasurer, a fee of *three cents* for the first sealing of any weight, measure, scale or beam, and *two cents* for each and every after sealing the same. And it shall also be the duty of town treasurers to procure, at the expense thereof, and to preserve a proper town seal, for the purposes hereinafter mentioned. And if any town treasurer shall neglect his duty in the premises, he shall, for each neglect, forfeit and pay *one hundred dollars*; one moiety thereof to the use of the poor of the town, and the other moiety to him or them who shall sue for the same; to be recovered in an action of debt, with costs of suit, in any Court proper to try the same.*

Once in every ten years the Town Treasurer must have the standard Troy weights belonging to the town, proved and sealed by the State or county Treasurer.†

* Stat. 1799, ch. 60, § 3.

† Stat. 1803, ch. 141.

See also *Scalers of Weights and Measures*.—page 213,
and *Selectmen*, 162.

See *ENGINEMEN*.

TOWNS.

I. *Of their corporate powers, and how they shall sue and be sued.*

THE inhabitants of every town within this government are hereby declared to be a body politic and corporate; and as such, may commence and prosecute any suit or action in any Court proper to try the same; and may also defend any suit or action commenced against them, and for this purpose, the said inhabitants, qualified and convened in manner aforesaid, may nominate and appoint one or more agents or attorneys. The choice of the agent or attorney, certified by the town clerk, shall be deemed and taken sufficient evidence of such appointment. And when any suit shall be commenced against any town (or other body corporate) a copy of the writ or original summons, or such other legal process as may issue against them, shall be left with the Clerk of such town, or with one or more principal inhabitants thereof (or with the Clerk or some principal member of the body corporate) thirty days at least before the day of the sitting of the Court unto which the same shall be returnable.*

II. *Of Town-meetings.*

1. *Of the annual meetings for the choice of Town Officers.*

The qualified voters in each town, shall in *March* or *April*, annually, meet at such time and place as they shall be notified to attend by the constable or constables of the town, or such others as the select men shall appoint to notify the same; and the said freeholders and other inhabitants shall then and there, by a major vote,

* Stat. 1785, ch. 75. § 8.—& Stat. 1783, ch. 39. § 4.

choose a clerk, who shall be under oath truly to record all votes passed in such and other town-meetings during the year, and until another clerk shall be chosen and sworn in his stead, and also faithfully to discharge all the other duties of his said office; three, five, seven, or nine able and discreet persons of good conversation, inhabiting in the town, to be selectmen, or townsmen and overseers of the poor, where other persons shall not be particularly chosen to that office, which any town may do if they think it necessary and convenient:—three or more assessors; two or more judicious persons for fence viewers; treasurer; surveyors of highways; surveyors of lumber; tythingmen; measurers of wood; clerks of the market; constables, and other usual town officers. The said officers to be chosen by ballot, or such other method as the voters agree upon.

When, by reason of non-acceptance, death or removal of any person chosen to office in any town, at the annual meeting for the choice of town officers, or at any other time, or by reason of a person's becoming *non compos*, there is a vacancy or want of such officers, the town, being orderly assembled in the manner this act directs, may proceed to a new choice of officers to supply such vacancy; and the person or persons thus chosen and sworn before the Town Clerk or a Justice of the Peace (in case an oath of office is by law required) shall have the same power and authority to discharge the duties of the office, as though chosen at the annual meeting for the choice of town officers.

2. Of Town-Meetings for the choice of Governor and other State officers.—See *Constitution, Selectmen, and Town Clerk.*

Any such meeting in any town where the number of qualified voters shall exceed five hundred, may be opened at an earlier hour than eleven of the clock in the forenoon of the day of election, at the discretion of the selectmen of such town; any thing in said Act to the contrary notwithstanding.

In any town, where the number of qualified voters shall exceed one thousand, it shall be the duty of the selectmen of such town to be in session at some convenient place, on the day immediately preceding such meeting; and

When this shall happen on Sunday, then on the Saturday immediately preceding such meeting, and for a time as much longer, previous to said day, as they shall judge necessary, to receive the evidence of the qualifications of persons mentioned in the first section of the Act to which this is in addition.

3. Of the manner of calling town-meetings.

When there shall be occasion for a town-meeting, the constable or constables, or such other person as shall be appointed for the purpose, by warrant from the selectmen, or the major part of them, shall summon and notify the inhabitants of such town to assemble at such time and place in the same town as the selectmen shall order; in the manner of summoning the inhabitants to be such as the town shall agree upon. And when ten or more of the freeholders of a town shall signify, in writing, their desire to have any matter or thing inserted in a warrant for calling a meeting, the selectmen are hereby required

to insert the same in the next warrant they shall issue for a meeting, or call a meeting for the express purpose of considering thereof; and no matter or thing shall be acted upon in such a manner as to have any legal operation whatever, unless the subject matter thereof be inserted

in the warrant for calling the meeting; and in case the selectmen shall unreasonably deny to call a meeting upon any public occasion, any ten or more of the freeholders of such town may apply to a Justice of the Peace within and for the same county, who is hereby authorized and empowered to issue his warrant, under his hand and seal, directed to the constable or constables of the town, if any such there be; otherwise to any of the freeholders applying therefor, directing him or them to notify and warn the inhabitants qualified to vote in town affairs, to assemble at such time and place in the same town as the said justice shall in his said warrant direct, and for the purpose in the same warrant expressed. And when, by reason of death, removal or resignation of selectmen, a major part of the number originally chosen shall not remain in office within any town,—in every such case, a major part of the survivors, or of such as remain in office, shall

have the same power to call a town-meeting as a major part of the whole number first chosen.

Several distinct meetings, or a town-meeting for distinct purposes, where the qualifications of the voters upon the several subjects to be acted upon are different, may be called by the same warrant; but it should distinguish between the different classes of voters.—Mass. Rep. vi. 7.

A town-meeting can only be proved by the records, unless they be lost or destroyed. But if it appears of record that a town-meeting was regularly called and held, and officers chosen, without any objection on account of deficiency in warning, any anterior irregularity proveable only by parole, cannot vitiate the choice of any officers had at such meeting.—Mass. Rep. xviii. 109.

If persons should vote, not legally authorized, it would not vitiate the proceedings of the meeting.—3 Pick. 232.

A town or parish meeting called by persons, under colour of authority, will be legal, unless exceptions are taken at the meeting.—*Ibid.*

III. *Of the power of towns in laying out Highways.*

Towns have no authority to direct the Selectmen upon this subject; it being the intention of the law that they should exercise their own discretion.—5-Pick. 492.

The acceptance of a town way laid by the Selectmen should take place, at a town meeting called for that purpose after the laying out, and by a warrant, containing notice, that the report of the Selectmen, upon that particular road is to be acted upon.—Anc. char. 459.—5 Pick. 492.

IV. *Power of making By-Laws and granting money.*

The freeholders and other inhabitants of each respective town, qualified as aforesaid, at the annual meeting for the choice of town officers, or at any other town-meeting regularly warned, may grant and vote such sum or sums of money as they shall judge necessary for the settlement, maintenance, and support of the ministry, schools, the poor, and other necessary charges, arising

within the same town ; to be assessed upon the polls and property within the same, as by law provided ; and they are also hereby empowered to make and agree upon such necessary rules, orders, and bye-laws for the directing, managing, and ordering the prudential affairs of such town as they shall judge most conducive to the peace, welfare, and good order thereof ; and to annex penalties for the observance of the same, not exceeding *thirty shillings* for one offence ; to enure to such uses as they shall therein direct : *Provided* they be not repugnant to the general laws of the government ; and provided also, such orders and bye-laws shall have the approbation of the Court of Sessions of the same county.—Stat. 1785, ch. 75.*

A bye-law of a city or town is binding upon strangers coming within its limits.—6 Pick. 187.

Corporations united as a fraternity, for the purpose of doing business, and those having a territorial jurisdiction, we have seen are subject to different rules, the latter have power to enact bye-laws to bind strangers which the former have not.—*Ibid.*

Towns may acquire property, real or personal. They may take by purchase or devise, and hold real estates, other than such as may be necessary to erect school-houses and other public buildings.—Mass. Rep. iv. 384, & xiii. 371.

The erection of public buildings for the accommodation of the inhabitants, such as town-houses to assemble in, and market-houses for the sale of provisions, are proper town charges, and within the fair meaning of the term *necessary*, as mentioned in the statute.—Mass. Rep. xiii. 272.†

But towns have no authority to assess and collect money for any other purposes than those which are expressed, and for defraying expenses incident to such purposes ; and also for such other expenses as may be necessary to discharge the duties imposed on them by law.—*Ibid.*—also v. 547, & xiii. 371.

Thus money cannot be voted for the purpose of defending the town against a public enemy for giving additional wages to the drafted militia ; nor for any purposes

* As to recovering penalties, Stat. 1801, ch. 63.

of public defence; nor for erecting a statue or monument.—*Ibid.*

V. *Of their Powers and Duties respecting the Inoculation of the Inhabitants with the Cow pox.*

It shall be the duty of every town wherein no board of health shall be established by law at their annual meetings, in the months of *March* or *April*, annually, to choose, in the manner in which other town officers are by law chosen, three or more suitable persons, whose duty it shall be to 'superintend the inoculation of the inhabitants of such town with the cow pox.

It shall and may be lawful for the inhabitants of any town, at any of their said annual meetings, to provide for the inoculation of the inhabitants of such town, with the cow pox, under the direction and control of said superintendents or board of health, where such board is established; and to raise all necessary sums to defray the expenses of such inoculation, or such part thereof as they may deem proper, in the same way and manner that other town charges are by law defrayed. Stat. 1809, ch. 117.

VI. *Of the power of Towns to suspend the operation of certain laws, or to determine whether they shall be in force within the town.*

1. As to restraining Cattle within their limits.

The inhabitants of any town within this Commonwealth may, at any town-meeting legally holden for that purpose, order and direct that any particular description of *horses*, neat cattle, or other commonable beasts shall not go at large, within the limits of such town, without a keeper, under the penalty of *fifty cents*;* and to be recovered by any person who shall sue for the same, for each breast found going at large without a keeper, contrary to the order and direction of any town as aforesaid.

If any person or persons shall turn out, or suffer any such cattle or beasts so restrained as aforesaid from go-

* Stat. 1817. ch. 143.

ing at large, to go at large on the Lord's day, with or without a keeper, such person or persons shall forfeit and pay *fifty cents* for each beast so turned out, or suffered to go at large; to be recovered by action of debt, by any inhabitant of such town who will sue for the same, and for his sole use. And it is also hereby made the duty of all field-drivers, within their respective towns and districts, to carry the provisions of this Act into effect.

If any person shall suffer any such cattle or beasts belonging to him or in his keeping, to go at large, contrary to the order and direction of any town; made pursuant to the authority given in this Act and the Act to which this is in addition, and any such cattle or beasts shall within such town do damage on the improved lands of any person, the person so suffering such cattle or beasts to go at large, shall be liable to pay all damages so done by such cattle or beasts; to be recovered by the person suffering such damage, in an action of trespass, before any Court proper to try the same, whether such improved lands be inclosed with a sufficient fence or not.*

2. As to Hay Scales.—See page 208.

3. As to the killing of certain useful Birds.

It is unlawful to take, kill, or destroy any partridges or quails, from the first day of March to the first day of September; and also, to take, kill, sell, buy or have in possession any of the birds called woodcocks, snipes, larks, and robins, between the first day of March and the fourth day of July, annually, under a penalty of *two dollars* for every partridge, quail, or woodcock, and *one dollar* for every snipe, lark, or robin so taken, killed, or had in possession.

The penalty for any person who shall kill any of the birds, aforesaid on lands not his own, is *ten dollars*.

And the inhabitants of any town, at their annual meeting may suspend the operation of this law, in whole or in part, within such town, and for such term of time, not exceeding one year, as they may think expedient.†

An additional Act extends the law to all birds on salt

* Stat. 1804, ch. 44.

† Stat. 1817, ch. 103.

marshes, between the first of March and the first of September, under a penalty of *two dollars* for each bird killed or taken; and gives to towns the same powers to suspend its operation.*

4. Of the act for preventing fraud in the admeasurement of Salt and Grain. See weights and measures. Sect. VIII.

Nothing in this Act shall be deemed to have effect or operation in any town or city, except such as at a legal meeting of the inhabitants of such town, or of the City Council of such city, shall declare that the same shall have effect and operation therein, nor until one month after such declaration shall have been published in some newspaper printed in such town or city, or its vicinity, where no newspaper is printed therein.—Stat. 1823, ch. 117.

5. Of regulating the storage of Gunpowder.—See Selectmen, page 190.

6. Of restraining dogs from going at large.

Towns and cities are authorized to pass bye-laws to license, regulate and restrain the running at large of dogs, at their discretion, and to affix penalties for the breach thereof, not exceeding ten dollars for any offence.—Stat. 1824, ch. 139.

No person shall be obliged to pay more than two dollars annually, for a license for his dog, and no bye-law of any town or city shall extend to any dog, owned or kept in any other city or town. The money received for penalties and licenses, is to be paid for the use of the town or city imposing the same.—Stat. 1824, ch. 139.

VOTERS.

I. Of voters in Elections of State, County, and Town Officers.

EVERY male citizen of twenty-one years of age and

* Stat. 1818, ch. 45.

upwards, (excepting paupers and persons under guardianship,) who shall have resided within the Commonwealth one year, and within the town in which he may claim a right to vote, six calendar months next preceding any election of any *town, county, or State Officers*, or any Representative to Congress; and who shall have paid, by himself or his parent, master or guardian, any State or county tax, which shall, within two years next preceding such election, have been assessed upon him, in any town in this Commonwealth; and also every citizen, who shall be by law exempted from taxation, and who shall in all other respects be qualified as above mentioned, shall have a right to vote in all such elections; and no other person shall be entitled to vote in such elections.—See *Constitution of Massachusetts, Amendment III.**

II. Of Voters in Town Affairs.

Every male citizen of this Commonwealth, who shall have resided in any town six calendar months next preceding any meeting for the transaction of town affairs, and who shall, in all respects, be qualified as required in the first section of this Act, [as in the foregoing paragraph,] shall be entitled to vote at such meeting, upon all questions concerning town affairs; and no person not qualified as aforesaid shall be entitled to vote therein.†

The laws upon this subject being relieved from much of their obscurity by recent enactments, the difficulty in determining upon the *residence* will occasion the greatest perplexity to town officers.

The Constitution, to remove *all doubts* upon the subject, provides that every person, for these purposes, shall be taken to be an inhabitant of the town where the person dwells and has his home.

A residence in a town for a temporary purpose will confer the right upon a citizen who has no permanent place of abode.—Mass. Rep. x. 488.

Thus a residence at college or other seminary of instruction will give a right to voting in the town, if the student has severed himself from his father's home, not-

* Stat. 1822, ch. 104. § 1.

† Stat. 1822, ch. 104. § 3.

withstanding it may be his expectation to change his residence.—*Ibid.*

A person having a residence in a particular town, does not lose his right to vote, by a temporary absence, with an intention of returning, and this notwithstanding he may have exercised his right of voting in another town during his absence.—Mass. Rep. xi. 350.

If the vote of one qualified, be rejected, there is no method by which the rejected vote can be counted by another tribunal.—*Ibid.*

Voters to entitle themselves to a remedy against the municipal officers, for depriving them of the right of suffrage, must be able to prove due diligence on their part, in obtaining an entry of their names upon the lists of voters, previous to the opening of the town-meeting.

WEIGHTS AND MEASURES.

I. *What Weights and Measures are the lawful Standards.*

The brass and copper Weights and Measures, formerly sent out of *England*, with a certificate from the exchequer, to be approved *Winchester measures*, according to the standard in the said exchequer, and adopted, used, and allowed in this Commonwealth, be and remain the public allowed standards throughout the same; by which all Weights and Measures shall be tried, proved, and sealed, in manner as is hereinafter provided. And it shall be the duty of the Treasurer of this Commonwealth, at the expense thereof, to cause to be had and preserved as public standards, and which shall be used only as such, the following Beams, Weights, and Measures, to wit:—*One bushel, one half bushel, one peck, one half peck, one Ale quart, one Wine gallon, one Wine half gallon, one Wine quart, one Wine pint, one Wine half pint, and one Wine gill.* Said measures to be made of copper or pewter, conformable, as to contents, to said *Winchester measures*; and as to breadth, *that is to say*:—the diameter

of the bushel, not less than eighteen inches and a half, containing *thirty-two Winchester quarts*; of the half bushel, not less than thirteen inches and three quarters, containing *sixteen Winchester quarts*; of the peck, not less than ten inches and three quarters, containing *eight Winchester quarts*; and of the half peck, not less than nine inches, containing *four Winchester quarts*; the admeasurement to be made, in each instance, withinside of the measure. Also, *one ell, one yard, one set of brass weights to four pounds*, computed at sixteen ounces to the pound, with fit scales and steel beam. Also a good *beam and scales*, and a nest of *Troy weights*, from one hundred and twenty-eight ounces, down to the least denomination; with the weight of each **Weight**, and the length of each Measure marked or stamped thereon respectively, and sealed with a seal to be procured and kept by the Treasurer aforesaid; and also *one fifty-six pound weight, one twenty-eight pound weight, one fourteen pound weight, and one seven pound weight*, made of iron.*

II. Of Troy Weights.

As the Troy weights used by the Treasurer of this Commonwealth as State standards, have, by long use, diminished and undergone an alteration in their proportions:

For correcting the disproportions and repairing the diminution aforesaid, the Treasurer is authorized and directed to add or cause to be added to the said Troy weights respectively, as follows, *viz.*—To the weight of one hundred and twenty-eight ounces, the further weight of twenty-seven grains; to the weight of sixty-four ounces, the further weight of fifteen grains; to the weight of thirty-two ounces, the further weight of six grains; to the weight of sixteen ounces, the further weight of seven grains; to the weight of eight ounces, the further weight of four and a half grains; to the weights of four ounces, the further weight of two and an half grains; to the weight of two ounces, the further weight of two and an half grains; to the weight of one ounce, the further weight

* Stat. 1799, ch. 60. § 1.

of two grains ; to the weight of half an ounce, the further weight of one quarter of a grain ; or procure new weights of the same denomination, and conformable to the said State standards, with the additions aforesaid respectively ; which weights, so corrected, shall be the standards of troy weight for this Commonwealth.*

All Banking Companies are required to have their weights every five years sealed, in the month of June, by the State treasurer, or by some person appointed by him ; otherwise a tender of gold by weight made by them shall not be lawful. Any person paying or receiving gold may require that the same be weighed in each scale, and the mean sum shall be the true weight of the gold.—Stat. 1825, ch. 106.—Stat. 1803, ch. 141.

Treasurers of counties are in like manner required to have their troy weights sealed anew, once in ten years, by the state treasurer ; and town treasurers, shall every ten years, have their town troy weights re-sealed, either by the state or county treasurer.—*Ibid.*

By an additional act town treasurers may procure the half bushel, peck and half peck to be made of wood in lieu of the copper or pewter measures provided for such measures.—Stat. 1800, ch. 54.

It is illegal to weigh with common steel-yards : But the vibrating steel-yards invented by *Benj. Dearborn*, and those by *Samuel Hills*, are permitted to be used in all weighing throughout this commonwealth ; provided the beam and poizes thereof, are sealed by some authorized sealer of weights and measures.—Stat. 1800, ch. 32 :—1816, ch. 60.

III. Of Dry Measures.

All measures by which fruit, meal or other things usually sold by heaped measures, shall be conformable as to capacity and breadth to the public allowed standards as aforesaid. If any person shall sell or expose to sale any meal, fruit, grain, goods, wares, merchandize or any commodity whatever, by any measures, beams or weights, not authorized by law, and sealed as aforesaid, he shall forfeit for each offence not less than one nor more than

* Stat. 1803, ch. 141.

ten dollars, one half to the poor of the town, and the other half to the sealer or to him who shall sue for the same.—Stat. 1799, ch. 60.

See *Selectmen*, page 196, *Town Treasurer*, page 246, and *Sealers*, &c. page 213, as to the size of *Charcoal Baskets* See page 114.

IV. *Of certain Articles to be sold by weight.*

All indian meal, rye meal, and every other kind of meal except oat meal, shall be sold by weight and not by the bushel. Every person who shall sell or retail any meal except oat meal by measure and not by weight, shall forfeit at the rate of five dollars for every hundred pounds so sold, to the sole use of him, who shall first sue for the same.—Stat. 1813, ch. 51.

No person is allowed to sell any salt, indian corn, wheat, rye, buck wheat, barley or oats unless it first be weighed. To ascertain the mean weight ten measures shall be weighed in every hundred bushels sold.—Stat. 1817, ch. 130.

Any person who shall sell any of said articles other than by weight, shall forfeit at the rate of two dollars for every bushel so sold; to the sole use of him, who shall first sue for the same.

This act does not extend to any sales of quantities of said articles of less than ten bushels, where the purchaser shall not require the article to be weighed; Nor to cases where the weight or measure shall be agreed upon by the parties or by the judgment of a third person, mutually appointed for that purpose.—Stat. 1817, ch. 130.

V. *What quantities shall be deemed a bushel.*

The standard weight and measure, in all sales in this Commonwealth of a bushel of salt shall be considered, seventy pounds; Indian corn and rye, fifty-six pounds; barley and buck wheat forty-six pounds; oats thirty pounds; wheat sixty pounds.—Ibid.

VI. *Of weighing by the nett, and not by the gross hundred.*

All commodities which formerly were sold by the gross[†]

hundred, or one hundred and twelve pounds avoirdupois, shall in every sale be weighed by decimal hundreds or pounds avoirdupois ; and all contracts for the sale of any goods shall be construed in like manner.—Stat. 1826, ch. 121.

VII. *Penalty for violations of the act.*

It is made the duty of every public weigher to conform to the foreign provisions, and to issue his certificates accordingly, and in default shall forfeit and pay five dollars for every offence.—Ibid.

VIII. *Of the admeasurement of salt and grain.*

All measures, by which Salt or Grain shall be sold, in addition to being conformable, as to capacity and breadth, to the public allowed standards established by law, shall have a bar of iron across the centre thereof, at the top, to be approved by a Sealer of weights and measures ; and a bar or standard of like metal, from the centre of the aforementioned bar to the centre of the bottom of the measure, to be in like manner approved ; and all such measures shall be filled by shoveling such salt or grain into the same ; and the striking thereof shall always be lengthwise of said bar. And if any person shall sell, or expose to sale, any salt or grain in any other measure, or shall fill or strike such measure in any other manner than is herein provided, such person shall forfeit and pay *fifty cents* for every bushel of salt or grain, measured, filled or stricken, contrary to the provisions of this act ; to be recovered by action of this case, or by complaint, with costs, before any Court of competent jurisdiction : *Provided, however,* That salt may be measured from vessels in such measures as are used by the government of the United States ; and that nothing in this act shall prevent the measuring of salt in tubs, or any proportional parts of hogsheads, without bars, as may be agreed by the city council of any city, or by any town meeting legally held ; and provided always, that nothing in this Act shall be deemed to have effect or operation in any town or city, except such as at a legal meeting of the inhabitants of such town, or of the city council of such city, shall declare that the same shall have effect

and operation therein, nor until one month after such declaration shall have been published in some newspaper printed in such town or city, or its vicinity, where no newspaper is printed therein.—Stat. 1823, ch. 117.

IX. *Of Weighers of Sloops and Vessels employed in transporting Sand, Gravel, and Stone.**

1. Every sloop and vessel employed in transporting those articles within the State shall be marked with stationary marks, on the stem and stern posts, nearly level with the bend of the vessel, with bar iron, not less than six inches by two inches and a half, to be driven through the stern-posts and riveted; from which all other marks shall take their distances, in feet, inches, and parts of inches, as the distance may require, from the lower edge of the said stationary marks, to the lower edge of the other marks; which marks shall be as follows, *viz.*—Light water marks, not less than four inches in length, and one half and one inch in breadth; and that every four tons above said light water marks, legibly cut, or cast in figures, of 4, 8, 12, 16, 20, &c. up to the full weight of said sloop or vessel; said figures shall express the weight said sloop or vessel is capable of carrying, when the lower part of the respective numbers shall touch the water; all of which numbers shall be of good and sufficient lead, fastened on the stem and stern posts of each sloop or vessel, with sufficient nails, not less than one inch in length.

2. It shall be the duty of the selectmen of every town in this Commonwealth, or the mayor and aldermen of any city, where such sloops or vessels are to be employed as aforesaid, at such time in *March* or *April*, of every year, to appoint one or more suitable persons as weigher or weighers of vessels, who shall be sworn to the faithful performance of the duties of his or their office.

3. It shall be the duty of the weigher or weighers as aforesaid, to furnish all marks and nails, when applied to for that purpose; to see that all sloops or vessels are weighed and marked agreeably to this Act; to keep a correct account of the distance of each mark below the stationary marks, in feet, inches, and parts of inches in a

* Stat. 1822, ch. 103.

book to be kept for that purpose, and to give a certificate of the same to the master of said sloop or vessel; which certificate shall express the distance as aforesaid. And it shall be the further duty of said weigher or weighers, to see that all persons employed on board of said sloop or vessels, at the time of marking, are stationed between the bulk-head or fore-chains of said sloops or vessels.*

4. Every person employed, or whose duty it is or may be, to take the tonnage of said sloops or vessels, is hereby authorized to deduct one ton for every inch the light water marks may be under water, after said sloops or vessels shall have discharged their cargo.

5. Every person who may be on board of any sloop or vessel employed as aforesaid, who shall not keep within the bounds of the aforesaid bulk-head and fore-chains of such sloop or vessel at the time of taking her marks, or when any weigher or weighers shall be employed in weighing or marking as aforesaid, (unless in case of absolute necessity,) he shall forfeit and pay a sum not less than *five dollars*, nor more than *twenty dollars*, for each and every offence; and every owner or master of any sloop or vessel employed as aforesaid, who shall neglect to have his sloop or vessel weighed, marked, and examined agreeably to the provisions of this act, or who shall remove any mark or marks, or alter his certificate, shall, on conviction thereof, forfeit and pay a sum not less than *fifty dollars*, nor more than *three hundred dollars*, for each and every offence; and every weigher or weighers as aforesaid, who shall be guilty of placing any mark as aforesaid, contrary to the provisions of this act, or who shall give a false certificate, shall forfeit and pay, on conviction thereof, a sum not less than *fifty dollars* nor more than *three hundred dollars*, for each and every offence. The above forfeitures to be recovered in an action of debt before any Court proper to try the same; one moiety thereof to the use of the person complaining, the other moiety to the use of the Commonwealth.

6. Any weigher of vessels chosen and qualified as aforesaid, shall receive from the owner or master of every sloop or vessel he may weigh and mark, *twenty cents*, for

* Stat. 1822, ch. 123.

each and every ton he may weigh for said sloop or vessel, and *four dollars*, for the furnishing all marks, nails, &c. and fastening the same, as is provided in this act, and furnishing the certificate; which sums shall be in full for his or their services.

7. Every sloop or vessel employed as aforesaid, shall have their marks examined in the month of June, in each year, by some sworn weigher, whose duty it shall be to examine all the marks on said sloops or vessels, and see if said marks agree with the former certificate, and if so, to certify the same; and in case said certificates and marks should not agree, then the said weigher shall keep the same in his possession, that the master or owner may be dealt with according to the provisions of this act. And the said weigher or weighers, as aforesaid, shall receive from the master or owner thereof, for his services, the sum of *one dollar and fifty cents*; and whenever it may be ascertained that any sloop or vessel's marks and certificates do not agree, the said sloop or vessel shall be weighed again.

X. Of Weighers of Beef.

1. The selectmen of every town where beef cattle are sold for market or barrelling, shall appoint one or more persons, not being dealers in cattle, and conveniently situated in such town, to be Weighers of Beef, who shall be sworn to the faithful discharge of their office.

2. All beef sold as aforesaid shall be weighed by the weighers, and certificates of the weight of all the beef, hide, and tallow of each head of cattle, shall be signed and delivered to the seller. [The form of the certificate is prescribed by law.—See *Forms*.]

3. The fees for weighing shall be for any quantity of cattle, not over five, *twenty cents* a head; not exceeding ten, *fifteen cents* a head; not exceeding twenty, *ten cents* a head; all over twenty head, *five cents* a head; together with *twelve and a half cents* for the certificate duly signed. All to be paid by the seller.

4. The penalty for any butcher or purchaser of beef cattle, intended for market or barrelling, who shall disre-

gard the provisions of this law, shall forfeit *thirty dollars* for each offence.—Stat. 1815, c. 99.

But nothing herein contained is to prevent persons from buying live cattle, commonly called cattle on foot. Nor shall any person be obliged to weigh any cattle, when the weight or mode of weighing shall be agreed on between the buyer and seller.—*Ibid.*

XI. *Of Public Weighers.*

Every weigher appointed by any city or town under the laws of the state, as well as every weigher for hire or reward, shall be deemed and taken to be a public weigher.—Stat. 1826, ch. 121.

OF WORK-HOUSES.

[A law, (Stat. of March, 1829) having given to Overseers of the Poor, the same power over paupers that Overseers of Work houses have, and towns having power to unite to build houses for the poor, in the same manner, as they have to build Work houses, it has been thought proper to present a summary of the Stat. 1788, c. 30. upon this subject.]

Whereas erecting houses for the employment of idle persons, who neglect and refuse to exercise any lawful calling or business to support themselves and families, and for the poor and indigent, that want means to employ themselves, may be useful to the public, and especially to such towns, as shall be concerned in such an undertaking.

1. Power of towns to erect such Houses, to choose Overseers, and general duty of those officers.

When any town in this Commonwealth shall see meet to erect or provide a house, for the purpose before named, such town shall be, and hereby is fully authorized and empowered thus to do ; and the towns aforesaid, as well as those who have already erected such houses, are hereby empowered, at their annual meeting for the choice of town officers, to choose three, five, seven, or more Over-

seers of said house, who shall have the inspection and government thereof, with full power of appointing a master, and needful assistants, for the more immediate care and oversight of the persons received into or employed in said house. Which Overseers, once in every month, and at other times, as occasion shall require, shall assemble together for the purpose of determining the most eligible method of discharging the duties of their office. And at their stated monthly meetings shall have power to make needful orders and regulations for such house; which orders shall be binding until the next public meeting of the inhabitants of such town, to whom such orders shall be presented for approbation; and when by them approved, shall be obligatory, until revoked by the town.

2. Power of towns to associate for this purpose.

When any number of towns shall agree (at their joint charge, and for their common benefit) to erect or provide a work-house for the employment of persons residing in such towns, that are indigent or idle, or to purchase land whereon to erect such house, or for the accommodation thereof, they shall be and hereby are vested with power and authority thus to do; and the ordering and governing the same, making the necessary repairs thereof, appointing a master and other assistants, and the power of removing him or them from their respective offices or trusts, for irregular behaviour, incapacity, or for other sufficient cause, shall be vested in Overseers, to be from year to year specially chosen by the several towns, at their annual meeting for the choice of town officers, each town to choose three, unless all the towns engaged in the undertaking shall agree upon a different number. And in case of the death of an Overseer, or his removal from the town for which he was appointed, the vacancy made thereby may be supplied by such town, at any other public meeting. And if any town concerned shall neglect to choose such Overseers, in such case the person or persons chosen in the other towns may proceed in all affairs of the said house, any such neglect notwithstanding.

3. Of Meetings of the Overseers.

There shall be stated quarterly meetings of all the

Overseers, on the first Tuesday of the months of *January, April, July* and *October*, annually, to be held at the work-house, in order to inspect the management, and for directing the business thereof; and besides those stated meetings, intermediate ones, to be held at the work-house, may be called by the Overseers of any town concerned; due notice of the time and occasion thereof being given to the rest, in such way and manner as shall be agreed upon by the Overseers, at any general stated meeting. And the said Overseers, when duly assembled, may choose a moderator, and at their first general meeting, annually, after their appointment, they shall likewise choose a clerk, to enter and record all votes and orders that shall be made and passed by the Overseers, who shall be sworn, to the faithful discharge of his trust.

4. Power of Overseers to make Bye-Laws.

The Overseers for the time being, at a general quarterly meeting, provided one half at least of the whole number chosen are present, shall have full power and authority to make all reasonable orders and bye-laws, not repugnant to the laws of this Commonwealth, for the ordering and regulating the said house, and the affairs thereof; which orders and bye-laws shall continue and be in force until altered, annulled or reversed by them or their successors in office; and may likewise agree with the master or other assistants, and order meet allowance for their care and service; and all other matters of less importance, relating to the said house, may be transacted at any other meeting duly notified, when only one third part of the Overseers are present, subject nevertheless to be altered or reversed at any general stated meeting.

5. Compensation to Master and Assistants.

The yearly stipend or allowance to the master and assistants, over and above what is provided for by this Act, for their care and trouble, together with the charge of keeping the house in repair, shall be paid by the several towns concerned, in proportion as they are taxed to the government, at the time the expense is incurred, or in such other proportion as all the towns concern-

ed shall agree upon : and if any town or towns shall refuse or neglect to advance or reimburse their respective proportions of such allowance, or other charges before mentioned, after they shall have been stated and adjusted by the Overseers, the same may be recovered of such delinquent town or towns, in any Court proper to try the same, by action to be brought by such person or persons, as the Overseers shall in writing appoint for that purpose.

6. Of the power of Overseers to commit persons to such houses.

Any two or more of the Overseers in any town already provided with such house, and any two or more of the Overseers, in any town that, either by themselves or in conjunction with other towns, shall hereafter erect a work-house, be and they are hereby authorized, empowered and directed to commit to such house, by writing, under the hands of the said overseers, to be employed and governed according to the rules and orders of the house, any person or persons, residing in such town, that are in this Act declared liable to be sent thither : *Provided* that no greater number of persons belonging to any town be received into the house, than such town's proportion of the said house be allotted them, can accommodate, when the receiving them will exclude or incommode such as belong to other towns ; and an order of commitment from two or more Overseers, directed to a constable of the same town, shall by such constable be obeyed and executed.

[But by the statute of 1822, ch. 82, passed February 10, 1823, it is provided that when any person shall be liable to be committed to the house of correction of any county, or the work-house of any town, complaint shall be made in writing, and under oath, to some Justice of the Peace in the county where the offence or disorder is committed : and the Justice shall cause the offender to be brought before him by warrant or otherwise. And if upon a hearing and examination of the matter set forth in the complaint, the allegations are proved to be true, the Justice may order, direct, and sentence the person convicted to be committed to the house of correction, work-house, or house of industry, (as the case may be,) within the coun-

ty, city, or town, there to be put to hard labour for a term not exceeding *six months*.

The party convicted has the privilege of appeal to the Common Pleas, by recognizing in common form, and in the mean time to keep the peace and be of good behaviour. And a repetition of the offence before judgment upon the appeal, is to be considered a breach of the recognizance.

It is further provided that if any person be found committing either of the offences referred to in any of the Acts prescribing the causes for which persons may be committed to the house of correction or work-house, in the public streets or roads in the night time, that such person may be apprehended by any magistrate, constable, or watchman, and may be kept in custody twenty-four hours; and before the expiration of the time, be taken before a magistrate, and there proceeded against or discharged, as the magistrate may order.

For a second conviction, the party may be sentenced to said house for one year, or to imprisonment in the Jail.

It is further provided, that the Act is not to impair or take away any power that overseers of the poor have by any law, over such poor persons as are actually chargeable to any town.

7. Description of persons to be sent to the Work-House.

The persons who shall be liable to be sent unto, employed, and governed in any work-house erected, or to be erected, by one or more towns, in pursuance of this Act are—all poor and indigent persons that are maintained by, or receive alms from the town; *also all persons able of body to work, and not having estate or means otherwise to maintain themselves, who refuse or neglect so to do, live a dissolute vagrant life, and exercise no ordinary calling or lawful business, sufficient to gain an honest livelihood, and all such as, having some rateable estate, but not sufficient to qualify them to vote in town affairs, do neglect the due care and improvement thereof, and such as spend their time and property in public houses, to the neglect of their business or by otherwise misspending what they earn, to the impoverishment of themselves and their families, are likely to be come chargeable to the town, or to the Commonwealth.*

8. Towns to be excluded from the privilege, that neglect to provide materials.

If any town shall refuse or neglect to provide its proportion of the needful furniture for such house, or the materials, implements or other necessary apparatus for carrying on the work there to be performed, according to their agreement, or as shall be directed by the Overseers, such town shall be deprived of the privilege of sending any person thither, until they shall comply with such agreement or direction.

9. Overseers to determine what tools, &c. each town may provide.,

Besides the aforesaid proportion of materials and other things to be found by the towns concerned, each town may likewise provide such other materials and tools for work as the Overseers of such town shall determine, any person by them committed to the said house can be employed about, more advantageously: and the master of the house shall receive such materials and tools, and keep them separate and apart from those sent to any other town, and shall be accountable to the Overseers of each town concerned, as well for the prime cost, as for all profits and earnings that shall be made by the labour of those belonging to such town, under his care, and shall keep a register of the names of the persons committed to such work-house, and of the towns to which they respectively belong, with the time of their being received into, and discharged therefrom, and of their earnings, that the same may appear to any of the Overseers, whenever they shall incline to inspect them. And all controversies between the master or keeper of such house, and the Overseers of any town, touching his accounts or other affairs whatever, respecting the work-house, may be determined by the Overseers of the house, at a general or quarterly meeting.

10. Towns are not to be chargeable, unless the person is sent by the Overseers—of the employment and punishment of the persons confined; and herein of the manner of obtaining a discharge.

No town shall be chargeable for the relief or support of any person committed to the said house, who was not

sent thither by the Overseers belonging to such town, nor shall any person orderly committed to the said house, be discharged therefrom, but by the Overseers that made the commitment, or by the Overseers at a general or quarterly meeting, or otherwise by the Court of Common Pleas in the same county, upon application to them made for that purpose.

And every person thus committed, if fit and able to work, shall be kept diligently employed in labour, during his or her continuance there. And in case the person so committed shall be idle, and not perform such reasonable task or stint as shall be assigned; or shall be stubborn and disorderly, they shall be punished according to the orders that shall be made for ruling, governing, and punishing the persons there committed, not repugnant to the laws of the government.

11. Of people who have no legal settlement.

When any foreigner or other person, not a legal inhabitant of any town within this Commonwealth, shall become idle or indigent, it shall be the duty of the Overseers of the town in which such person resides, or any two of them, to commit such idle or indigent person to the work-house belonging to the same town, or in which such town is interested; and the person or persons so committed, shall be under the care of the keeper of such house, and be employed, if capable of labour, in the same way and manner as is herein before directed, and shall be subject to the same rules and regulations as others committed to said house; and such Overseers shall keep a fair account of the charge of supporting such idle or indigent person, from time to time, and shall exhibit the same, once in every year at the least, to the General Court, for allowance and payment; deducting therefrom the amount of such person's earnings.

12. Earnings, how applied.

One third part of the profits or earnings of the work done by the persons detained in such house, shall be to the master, for, and towards his support, over and above such further annual stipend as the Overseers may allow

him. And the prime stock, together with the other two thirds of the profits, shall be disposed of by the Overseers of the respective towns to whom it belongs, either to the master towards his services, or for the support of the families of the persons there detained, if any such they have, or otherwise for the use of such town, as occasion shall require.

13. Work-Houses may be discontinued.

Any work-house erected or provided as aforesaid, may be discontinued or applied to any other use, whenever the town or towns concerned shall find their circumstances require it, and shall agree thus to do.—Stat. 1788, c. 30.

4. Of persons committed to Houses of Correction, and how they are to be discharged therefrom, and from Work-Houses.

[The statute of 1822, ch. 82, provides a mode for the discharge of any persons confined in these houses “whenver it shall appear to the majority of the Overseers of a house of correction, or work-house, or house of industry, that any person therein confined has reformed, and is willing to return to an orderly course of life, such person may be discharged from confinement. But if such person shall afterwards be found guilty of any of the offences for which he would be liable to be sent to any such house, the Justice or Court before whom the second conviction may be had, may sentence such person to hard labour in either of said houses, for a term not exceeding one year, or to imprisonment, not exceeding six months.

The 4th section repeals all Acts and parts of Acts inconsistent with this Act: *Provided* that nothing herein contained is to take away or impair the power and authority given to the Overseers of the Poor of any town or city, in respect to such poor persons as are *actually chargeable* on any such town or city, by virtue of any law of the Commonwealth.

The confusion upon this subject results from not properly classifying the persons who are the proper subjects of these laws.

1. All persons, who from age, infirmity or poverty, are in want, are to be supported by the public charity. Of

these the Overseers of the Poor are the proper guardians, and they may support them in that manner their principles of humanity, prudence or economy may dictate. It is true, they have power to support them in the work-house, but not as violaters of any law. When there, such persons are probably under the control of the Overseers of the work-house. They may be discharged whenever either Board of Overseers may think it for the interest of the paupers, or the town, that they should be permitted to shift for themselves.

2. Persons able to work, not having estate or means otherwise to maintain themselves, who refuse or neglect so to do, together with such others as are named in the latter clause of the 7th sec. of statute 1788, ch. 30, as above, are the proper subjects of the work-house, but must be proceeded against by complaint of an individual to a Justice of the Peace, agreeable to the statute of 1822, ch. 82.

3. The subjects of the house of correction are generally those who are guilty of the offences above named, together with some other offences and *disorders* of a similar character, such as common drunkards, fortune-tellers, vagabonds, &c.

These offenders must be proceeded against before a Justice of the Peace in all cases; but if the overseers of the house are of opinion that they have reformed, they may be discharged by them, before the expiration of the term of the Justice's sentence, as we have seen before.

4. Houses of Correction, are also made asylums for Lunatics, and persons so furiously mad, as to render it dangerous to the peace and safety of the people, for them to go at large. Such persons must be proceeded against upon complaint before two Justices of the Peace, one of the Quorum. They are committed until they shall be restored to their right minds, or otherwise be discharged by due order of law. When it is made to appear satisfactory to the Court which caused the commitment, that the person is restored, an order is given for a discharge. In other cases, provision is made (by Stat. 1826. c. 142.) that the friends of any lunatic so confined may petition either of the Courts of record, and they have the power of discharge upon a bond to the county treasurer, condi-

tioned for the safe keeping and maintaining of such lunatic.

5. Houses of Correction are also used as State prisons for the confinement of convicted criminals to hard labour, in pursuance of the sentence of the higher Judicial Courts. These offenders are kept distinct from the other persons confined there, at the expense of the Commonwealth, and can be discharged before the expiration of their sentences, only by the pardon of the Governor and Council.

15. Of the employment of persons in Houses of correction.

Persons confined as criminals, as above named in article 5. are employed by the Commonwealth. The materials are provided by them, and they have all the profits of the labour. The accounts are settled by the County Commissioners, and the Sheriff of the County has the oversight and custody of the prisoners. Counties are not at any expense, excepting for the erection and repair of the house.—Stat. 1818, c. 123.

All other persons confined in such houses, if of ability to labour, must be set to work by the master. The County Commissioners are bound annually to appoint three or five suitable freeholders living near said house as overseers of the same: to furnish suitable materials at all times for the employment of the prisoners, and at every term of their Court to examine the accounts and registers of the Master and Overseers, and make such regulations for the employment, treatment and government of the prisoners as they shall judge proper.—The master is to keep an accurate account of the expenses of each prisoner and of his labour and the proceeds thereof.

16. Of the earnings of the prisoners, and the expenses of supporting them.

The master is to be allowed such reasonable compensation for supporting the prisoners, as the County Commissioners shall determine, upon inquiry into the circumstances of each case; (Stat. 1826, ch. 142,) and he is to credit each prisoner with the amount of his labour, and two thirds of the net proceeds thereof, is to be paid over to said prisoner, unless he shall be the master or head of a family, in which case the whole profit of his labour, or so much thereof as the Commissioners may order, shall be

for the relief and support of his family. The expenses to be deducted from the labour, are in general, boarding, doctoring, nursing, clothing, and a small sum upon each prisoner for the compensation of the keeper and overseers of the house. If the balance of the account is against the prisoner, the keeper is to be paid, in the order following :

1. Out of the estate of the prisoner.
 2. By such of his kindred as are obliged by law to support him.
 3. By the town, where he has his settlement.
 4. By the County, who shall be reimbursed by the Commonwealth, the same amount as is allowed for other State paupers.*
17. Of the liability of towns to Keepers of Houses of correction, and of his remedy for his compensation.

Whenever a keeper of a house of correction shall have his accounts certified and allowed by the Court or their committee, he shall have a right to demand and receive the same from such person, or from his master or kindred liable for his support, or from the town where he has his settlement, and if the person or the town so liable, shall neglect to pay such sum for the space of fourteen days after the same shall have been demanded in writing, of him, or of one of the selectmen of the town, the keeper may recover the same from such person or town by action of *assumpsit*, with interest and costs. The keeper shall have the same power of recovering the same directly from the kindred of the prisoner, as towns have, by virtue of the act of 1793, ch. 59.†

* No male person between the ages of twelve and sixty, able to labour, is to be considered a State pauper, Stat. 1823, c. 21 : Nor will the State allow more than ninety cents a week for an adult pauper and fifty cents a week for a child. Stat. 1821, c. 20.

† Stat. 1827, c. 54 :—1797, c. 62 :—1802, c. 22 :—1822, c. 88 :—1826, c. 142.

IMPOUNDING.

I. *For the maintenance of pounds, and concerning the impounding of cattle.*

Sec. 1. There shall be provided and maintained in each town, at its proper cost and charges, a sufficient pound or pounds in such place or places therein as the town shall direct or have directed; and each town shall also annually appoint a suitable person to keep each pound, wherein swine, sheep, horses, asses, mules, goats and neat cattle, may be restrained and kept for the causes hereinafter mentioned; and any town that shall neglect to provide or maintain such pound for the space of three months, shall forfeit and pay to the use of the county in which such town is situated, fifty dollars, to be recovered by indictment in any court competent to try the same.

Sec. 2. All pounds which are at present maintained by any town, shall be deemed to be pounds within the meaning of this Act until others shall be provided in their stead, except that towns shall be liable to indictment and forfeiture as aforesaid for the insufficiency thereof; and all pound keepers and field drivers heretofore legally appointed or chosen, shall hold their respective offices until others shall be chosen and sworn in their stead.

Sec. 3. There shall be chosen, at the annual meeting for the choice of town officers, in each town, two or more persons for field drivers, who shall be sworn to the faithful performance of their trust.

Sec. 4. The field drivers aforesaid, within the limits of their respective towns, are hereby severally authorized and required to take up, at any time, any swine, sheep, horses, asses, mules, goats or neat cattle, going at large in the public highways or town ways, or on common and unimproved lands, and not under the care of a keeper, and restrain them in either of the pounds in such town, until the owner shall pay for the use of the field driver, fifty cents per head for all such horses, asses, mules or neat cattle, and ten cents per head for all sheep and swine, together with four cents per head for all animals of either description, besides the expense of keeping

them, to the pound keeper, whose duty it shall be to furnish them with suitable food and water ; *provided*, that if the number of sheep so taken up shall exceed ten, said owner shall pay but seven cents per head to the field drivers and two cents per head to the pound-keeper, who shall have care of the pound in which they may be restrained.

Sec. 5. Any person who shall suffer an injury in his land by sheep, swine, horses, asses, mules, goats or neat cattle belonging to another, unless the owner thereof shall be in possession of contiguous land, from which such animals shall have escaped through the neglect of the person injured to maintain his part of the division fence, may have and maintain an action of trespass *quare clausum fregit* against the owner of the same for his damages ; or he may impound and restrain the creatures doing the damage, or some of them, at his election, in one of the town pounds, or in some other place under his immediate care and inspection, as may be most convenient for relieving them with food and water, which relief it shall be the duty of the person impounding, suitably to furnish or cause to be furnished during their confinement. And the creatures so impounded shall be restrained until the owner or owners thereof shall pay the amount of damages sustained by the trespass, the expense of keeping said creatures and of advertising the same, if the same shall be advertised as is hereinafter provided, and the fees of the pound keeper, if the impounding shall be in a public pound. And the person so impounding shall on demand state the amount of the damages and expenses which shall be claimed by him, and in case the animals shall be restrained in a town pound, he shall thereupon leave with the keeper thereof a statement of his claim for damages.

Sec. 6. Whenever any of the aforesaid creatures shall be impounded for either of the causes aforesaid, the person so impounding them, shall, within twenty-four hours thereof, cause the owner or owners of said animals, or the person having the care of them, if known, and living within six miles from the place of impounding, to be notified of the fact, and of the place where said creatures shall be impounded, together with the cause thereof,

which notification being delivered to the owner or keeper of said cattle or left at the usual place of abode of either of them, shall be sufficient. And when the owner of the creatures impounded or the person having the care of them shall be unknown, or shall live more than six miles from the place of impounding, the person impounding them shall cause a notification thereof to be posted up, within twenty-four hours from the time of impounding, in a public place in the same town or district, and also in two adjoining towns or districts; *provided*, the distance to a public place in such adjoining towns shall not exceed four miles, and if the value of the creatures taken up shall exceed ten dollars, the said person shall also cause such notification to be published three weeks successively in a public newspaper in the county where the same shall be taken up, provided a newspaper shall be published therein. And if the owner or person entitled to said animals shall not appear within fourteen days from the time when said notice shall have been given, and pay all fees which shall be due on account of the impounding of said animals, the expenses of keeping and advertising the same, and the amount of damages sustained in case the said animals shall be impounded for damage done by them, the person impounding may sell or cause to be sold the creature or creatures impounded, at public vendue to the highest bidder, notice of such sale being posted up at some public place within said town or district twenty-four hours before the time of sale. And the proceeds of such sale, after paying all damage, costs of impounding, keeping, advertising and selling, shall be deposited in the Treasury of the same town or district, for the use of the owner of said animals, who shall be entitled to the same, in case he shall substantiate his claim thereto within two years from such sale. And the amount of said damages, costs and expenses shall be appraised by two disinterested and discreet persons, who shall be chosen and sworn to the faithful discharge of said duty by the clerk of said town or district, or by any justice of the peace, in the county in which such sale shall be made. And the said appraisers may receive from the proceeds of said sale a reasonable compensation for their services, to be included in the costs aforesaid. And the same proceedings shall be had

to ascertain the amount of damages, costs and expenses, on the application of the owner of animals impounded whenever he shall be dissatisfied with the claim of the person impounding.

Sec. 7. If any of the creatures impounded as aforesaid, shall escape, or shall be rescued out of the custody of the pound-keeper, or person impounding, the said pound-keeper and field-driver or other person impounding, shall have authority to re-take and hold the same, and dispose thereof, as if no such escape or rescue had taken place.

Sec. 8. If any person shall rescue from any field-driver or person impounding, or from any pound-keeper, any of the foregoing description of animals lawfully in the custody of such field-driver, person impounding or pound keeper, the individual so offending shall forfeit and pay a sum not less than five nor more than thirty dollars, to be recovered by indictment in any court competent to try the same, and shall also be liable, in action of the case at the suit of any person injured, to respond all damages which such person shall have sustained thereby. And if any person shall wilfully injure any pound kept and maintained by any town or district, such person shall be punished by fine not exceeding fifty dollars, or by imprisonment in the common gaol not exceeding ninety days, at the discretion of the court, before which the trial shall be had.

Sec. 9. The act of the year seventeen hundred and eighty-eight, chapter fifty-six, entitled "An Act for regulating swine," the act of the same year, chapter sixty-five, entitled "An Act declaring the causes for which cattle may be impounded, the manner how they shall be proceeded with in such cases, and for preventing rescue and pound breach," the act of the year seventeen hundred and ninety-six, chapter seventy, entitled "An Act for the amendment of an Act for regulating swine," made and passed on the thirteenth day of February, in the year of our Lord one thousand seven hundred and eighty-nine, "the Act of the year seventeen hundred and eighty-eight, chapter forty-four, entitled an act to prevent damage by horses going at large, and an Act of seventeen hundred and ninety-three, chapter nineteen, in addition thereto, the Act of seventeen hundred and ninety-nine, chapter

sixty one, entitled an Act empowering towns to restrain cattle from running at large within their several limits," and the several Acts in addition thereto, are hereby repealed, saving and excepting all vested rights which may have been obtained under such Acts.

April 2, 1834.

SCHOOLS.**I. *Concerning meetings of school districts.***

All future meetings of any school district, may be convened by a warrant to be issued by the prudential committee, directed to any member of such district, and served in such manner as the said district has appointed, or may hereafter appoint at a legal meeting thereof, for warning meetings of such districts.

March 31, 1834.

OATHS.

CLERK.

You swear, that in the office of clerk, to which you are chosen, you will truly record all votes passed in all town meetings during the year, and until another clerk shall be chosen and sworn, and also faithfully discharge all the other duties of your office.—*So help you God.*

SELECTMEN.

You swear, that you will faithfully and impartially discharge the duties of the office of selectman, to which you have been elected, respecting all elections and the returns thereof.—*So help you God.*

ASSESSORS.

You, *A. B.* one of the Assessors for the of *C.* for the year ensuing, do swear, that you will proceed, equally and impartially, according to your best skill and judgment, in assessing and apportioning all such rates and taxes as you may, according to law, be directed to assess and apportion during that time.—*So help you God.*

CONSTABLES.

Whereas you, *A. B.* are chosen constable within the town of *C.* for one year now following, and until another be chosen and sworn in your place, do swear, that you will carefully intend the preservation of the peace, the discovery and preventing all attempts against the same; that you will duly execute all warrants which shall be sent unto you from lawful authority, and faithfully attend to all such directions in the laws and orders of court as are or shall be committed to your care; that you will faithfully and with what speed you can, collect and levy all such fines, distresses, rates, assessments, and sums of money, for which you shall have sufficient warrants according to law; rendering an account thereof, and paying the same according to the direction in your warrant; and with like faithfulness, speed and diligence, you will serve all writs, executions and distresses in private causes betwixt party and party, and make return thereof duly in the same court where they are returnable; and in all these things you shall deal faithfully whilst you shall be in office, without any sinister respects of favor or displeasure.—*So help you God.*

COLLECTORS.

You, *A. B.* being appointed a collector of taxes within the of , for one year next following, do swear, that you will levy and collect, with what speed you can, all such rates and assessments, for which you shall have sufficient warrants, according to law; rendering an account thereof, and paying the same, according to the direction in your warrant.—*So help you God.*

OTHER TOWN OFFICERS.

You, being elected a for the town of , for the year ensuing, solemnly swear, that you will faithfully and impartially perform the duties of said office.—*So help you God.*

APPENDIX.

OF DISTRICTS.

IN this State there were formerly a species of municipal Corporation, called Districts: they had the general powers of towns excepting that of sending Representatives to the General Court. The statute of 1785, ch. 76. sec. 9. declares that all such places as were incorporated before January 1st, A. D. 1777, are declared to be towns, to every intent and purpose. And such as were incorporated after that day should have such powers as were invested in towns by virtue of that statute.

The number of these corporations is now reduced to two or three, and their powers and duties can easily be ascertained by referring to the statute aforesaid.

ASSESSORS.

FORMS.*

I. Complaint against an Assessor who neglects to be sworn.

To the Justices of the Court of Common Pleas for the county of _____ to be held at _____ within and for the county aforesaid, on the _____ Tuesday of next. Complains *A. B.* Treasurer of the _____ town of _____

* By statute of 1823, ch. 138, whenever the Treasurer of this Commonwealth shall be directed to send a Tax Act to the Assessors of any town, it shall be his duty to send therewith a suitable number of blanks for invoice and valuation books, in the form prescribed, and also suitable and convenient forms of warrants, certificates of assessments for State, county, and town taxes, forms of notices to be posted up previous to the making of any tax, and also blanks for Tax lists or books, sufficient for such town.

C. D. of [addition] on the day of last, was duly and legally chosen by the qualified voters of the said to serve as an Assessor thereof, and that the said *C. D.* was notified to take the oath of that office as the law directs; yet the said *C. D.* has, for the space of seven days after being notified as aforesaid, neglected and still neglects to take the said oath, whereby he hath forfeited the sum of *five pounds*, for the use of the poor of the said ; wherefore your complainant prays that a warrant of distress may be issued against the said *C. D.* for the forfeiture aforesaid in form and manner as the law directs.* Dated at the day of Anno Domini *A. B.* Treasurer.

II. Notification to the Inhabitants to bring in the lists of their Polls and Estates.—See page 39.

The inhabitants of the town of *P.* (and others owning real estates in said town,) are notified to bring in to the subscribers, Assessors of said town, true and perfect lists of their polls and estates, both real and personal, (liable to taxation in said town) which they were possessed of on the first day of May inst. S.—, May 2, 1825.

M. T. }
L. R. } Assessors.
M. S. }

Rules for assessing Taxes.

The blank forms for the valuation and rate bills are prescribed by the additional Tax act of March 4, 1829. The State Treasurer is directed by stat. 1823, ch. 138, to furnish assessors with every tax act, suitable blanks for assessing all the taxes. The proper mode of filling these blanks is the duty before us.

1. Of the invoice or valuation.

Affix against every person's name, the number of his male polls over sixteen years of age; and also a correct and descriptive list of his taxable property. Cast six per

* Stat. 1785, ch. 50. § 1.

cent. upon each man's property, and carry out the result in the columns marked "*reduced value*."* There is no column for *income*, and as this odious tax, has not been abolished by the Legislature, the value of *every person's* income should be added to his personal estate. Let these several columns be correctly footed, in order to ascertain the total amount of polls and estates in the town.

2. Of the Poll taxes.

One sixth part of the whole sum to be raised by any tax should be set upon the polls, as near as can be done conveniently, unless it exceeds *one dollar and fifty cents*, upon an individual, in which case, that sum must be the poll tax, for city, town and county purposes exclusive of the highway tax.

Add together the town grant and the county tax, and divide the sum by 6. The quotient will be the sum to be assessed upon the polls; divide this by the whole number of polls, and you have the tax upon each.

3. Of the appointment upon the estates.

After subtracting the amount of the poll taxes from the gross amount of the money to be raised for the town and county, then apportion the balance upon the aggregate of property both real and personal, as contained in the totals of the columns marked "*reduced value*."

EXAMPLE.

The town of W. appropriates \$5000 to defray town charges, and their county tax is \$1650. They have 1050 polls; and the gross amount of their valuation (includ-

* *Reduced value.*] Formerly unimproved lands were taxed at *one third* part only, of their value, and assessors were directed to assess them at *two per cent.* and other property at *six per cent.* upon its valuation: this distinction being abolished by the new law respecting taxation; all property being put at its true value, no reason can be given for retaining this "*notion*" but that such is the wisdom of the Legislature.

If it is an object to facilitate computation by diminishing the amount, why not reduce decimally? This mode would be a great saving of time and labour, would prevent many errors, and be more in accordance, with the improved methods of computation, as taught in our schools.

ingreal, personal and income) is \$2,500,000. Six percent upon this sum gives \$150,000 as their reduced valuation.

1. What sum is to be assessed upon a poll? 2. How much upon a reduced dollar in the valuation? 3. What is the tax of L. L. who has one poll, \$30,000 in real, and \$3,000 in personal estate?—

Answer to 1st question.

Town grant—5,000

County tax—1,650

6) 6650
1108,33

1050)

1108.33

1050

5833

5250

683.

\$

(1.05.

{ on each
poll.

Answer to 2d question.

1050 polls at \$1.05=\$1102.50.

Deduct this sum from 6650. 1102.50=5547.50.—which is to be averaged upon the estates, thus :—

150,000 : 5547,50 : : 1 : 003,69 That is, 3 cents 6 mills and
450000 [nine tenths of a mill
[upon a dollar.

1047500

900000

1475000

1350000

125000

It will be perceived that the decimal might be pursued farther, but for practical purposes, he should assess 3 cents and 7 mills upon the dollar which produces a fraction over the precise sum of \$2,50. Thus \$150,000 \times 003,7 is = \$5550.00.—

This fraction is called the overlaying, and it is usual to have it much larger. But in no case must it exceed 5 per cent upon the tax.

Multiply each man's reduced valuation by 003,7 and you have his tax.

Answer to 3d question. What is the tax of L. L. ?

Real estate, \$30,000 at 6 per cent. is=\$1800.

Personal, 3,000 reduces to 180 3,7

3,7	
1260	12600
540	5400
6,66 0	\$66,60 0 Real
	6.66 Personal
	1.05 Poll

\$74.31 Total of tax

It is a more general method to form a scale or table as follows:—

	\$ 10,000	\$ 1000	\$ 100	\$ 10,0	\$ 1,00	Cents. 10
1	370,00	37,00	3,70	0,37	003,7	000,37
2	740	74,00	7,40	0,74	007,4	000,74
3	1110	111,00	11,10	1,10	011,1	001,14
4	1480	148,00	14,80	1,48	014,8	001,48
5	1850	185,00	18,50	1,85	018,5	001,85
6	2220	222,00	22,20	2,22	022,2	002,22
7	2590	259,00	25,90	2,59	025,9	002,59
8	2960	296,00	29,60	2,96	029,6	002,96
9	3330	333,00	33,30	3,33	033,3	003,33

To know L. L's, tax on real,

We find \$1000 pays 37.00

\$800 29.60+66.60

on personal \$100

\$80

3.70

2.96+6.66

1 poll pays - - - 1.05+\$74.31.

PARISH TAXES.

The principle is precisely the same as in town taxes. To the valuation should be added the amount of real estate owned by the parishioner, in every other town in the Commonwealth.

EXAMPLE I.

The valuation of the second Parish in W. is \$1,466,666.28—Six per cent on this, is \$88,000:—and they have 217 polls. The amount raised to defray parish charges is \$1682, one sixth of which is \$280.33; to make the polls an even sum, they are set at \$1.30— $217 + 1.30 = 282.10$.

This deducted from \$1682 leaves \$1399.10, to be assessed upon the estates. Divide this sum by 88,000, and it gives 001,57. Cast this tax by 001,6 mills upon the reduced dollar, and it leaves a surplus fraction of \$8,90 only.

L. L's. town valuation on real was	30,000.00.
To this is added lands in O. and S.	1,200. +
	<u>31.200.</u>
	x6

	Reduced value	\$1872.00.
Personal, on town valuation	3,000.	
Income, omitted by town assessors	500 + 3,500	
	<u> </u>	x6

On real	1872	Reduced value +	\$210.00
	x1,6	On personal	210.00
	<u> </u>		x1,6
	\$112,32		<u> </u>
	1872		1260
	<u> </u>		210
	\$29,95 2		<u> </u>
			3,36 0 Personal
			29.95 Real
			1.30 Poll
			<u> </u>
			34.61. Total of L.
			L's Parish Tax.

EXAMPLE 2.

Suppose said Parish votes a tax of \$5000. By the recent law, no more than \$1.50 can be set to each poll, $217 + 1.50 = 325.50$ which from 5000, leaves \$4674.50. This sum divided by the valuation, gives a small fraction over 5 cents and 3 mills upon the reduced dollar. To obtain the whole amount of the grant, we assess 5 cents and 4 mills upon the dollar, and the surplus fraction will be \$77.50.

L. L's. tax on real 1872.	On personal 210
×5,4	×5,4
<hr/>	<hr/>
7488	840
9360	1050
<hr/>	<hr/>
+101.08 8	11.34 0 Personal
	101.08 Real
	1.50 Poll
	<hr/>
	+113.92 L. L's. tax on \$5000

V. *Form of Commitment to the Collector, including his warrant for collecting his taxes as sent by the State Treasurer, with the Tax Act of 1824, and pursuant to the statute of 1823, ch. 138. sec. 1.*

W ss. To S. H. Constable or Collector of the town of S. in the county of W——, GREETING.

[L. S.] IN the name of the Commonwealth of Massachusetts, you are hereby required by us the subscribers, Assessors of the said town, to levy and collect of the several persons named in the list herewith committed unto you the sum of *one hundred eighty three dollars and seventy five cents*, each one his respective proportion therein set down of the sum total of such list, it being*

of this town's proportion of a tax or assessment of *seventy five thousand dollars* granted and agreed upon by

* If there are more Collectors than one, the first blank in the body of the warrant must be filled with the words "a part," otherwise it must be filled with the words, "the whole,"—and if all the three taxes are not included in the tax list, such parts of the blanks only are to be filled as apply to the taxes assessed.

the last General Court of said Commonwealth, for defraying the necessary charges of securing, protecting and defending the same; *together with a further sum of thirty-one dollars, charged to this town for their Representatives' pay; and a tax of six thousand dollars granted by the General Court aforesaid, for defraying the necessary charges and expenses of the county aforesaid; and a tax of three thousand two hundred dollars voted and agreed upon by the town aforesaid, at their meeting legally held for that purpose, on the first day of March last, for defraying the necessary charges and expenses thereof; together with the sum of ninety-four dollars and ninety cents, being the over-layings on all said taxes; and also a further sum of nineteen dollars and forty cents, for deficiencies in the highway taxes of the year preceding.*

And you are to complete and make up an account of the collection of the whole sum, and transmit and pay over the same as follows, viz. *two hundred fourteen dollars and seventy-five cents* thereof, unto *N. M. Esq.* Treasurer and Receiver General of said Commonwealth, or his successor in that office, on or before the first day of *April* next.

And *one hundred and forty-four dollars and fourteen cents* thereof unto *S. A. Esq.* Treasurer of the county aforesaid, or his successor in that office, on or before the first day of *December* next.

And *three thousand three hundred and fourteen dollars and thirty cents* thereof, unto *T. H. B. Esq.* Treasurer of said town, or his successor in that office, on or before the first day of *March* next.

And if any person shall refuse or neglect, upon demand by you made, to pay the sum he is assessed in the said list, you are to distrain the goods or chattels of such person to the value thereof, and the distress so taken to keep for the space of four days at the cost and charge of the owner; and if he shall not pay the sum so assessed within the said four days, then you are to sell openly, at public vendue, the distress so taken for the payment thereof, with charges, first giving forty-eight hours' notice of such sale by posting up advertisements thereof in some public place in said town, which said notice may given either before

or after the said four days shall have expired ; and the overplus arising by such sale (if any there be) besides the sum assessed and the necessary charges of taking and keeping the distress, you are immediately to restore to the owner, with an account in writing of the sale and charges ; and for want of goods and chattels to be shewn you whereon to make distress (besides tools or implements necessary for his trade or occupation, beasts of the plough necessary for the cultivation of his improved lands, arms, utensils for house-keeping necessary for upholding life, bedding, and apparel necessary for himself and family) for the space of twelve days, after demanding the payment of any sum so assessed ; you are to take the body of such person so refusing or neglecting, and him commit unto the common jail of the county aforesaid, there to remain, until he pay the same, or such part thereof as shall not be abated by the assessors of said town for the time being, or by the County Commissioners for the county aforesaid.

Given under our hands and seals, by virtue of warrants from the State and county Treasurers aforesaid, and the vote of said town, passed on the said first day of March last, this first day of September, A. D. 18 .

State tax,	183 : 75	N. W.	} Assessors of the Town of S—.
Representatives' pay,	36 : 00	L. R.	
	———— 214 : 75	M. S.	
County Tax,	144 : 14		
Town Grant,	3200 : 00		
Overlayings,	94 : 90		
Highway deficiencies,	19 : 40		
	———— 3314 : 30 X		
	———— 3669 : 19		

VI. Certificate of Assessment of the State Tax to be returned to the State Treasurer.

Pursuant to a warrant from the Treasurer of the Commonwealth of Massachusetts, dated the , day of Anno Domini , we have assessed the polls and estates of the town of the sum of and have committed the lists thereof to the of said viz. to

with warrants in due form of law, for collecting and paying in the same to _____, Treasurer of said Commonwealth, or his successor in office, on or before the day of _____ next ensuing.

In witness whereof we have hereunto set our hands at this _____ day of _____ Anno Domini.

A. B. } Assessors.*
C. D. }

A certificate in a similar form is also to be returned to the County Treasurer, and another to the Town Treasurer, and also to the Selectmen.

VII. To the Town Treasurer and to the Selectmen of the Town of S.

We have assessed upon the polls and estates of the town of S_____ the sums following, which we have committed to S. H. Collector of said town, with a warrant for collecting the same in due form of law.

State Tax,	214: 75	N. W. }	Assessors of
County Tax,	144: 14	L. R. }	the Town
Town Grant,	3200: 00	M. S. }	of S_____.
Overlays upon			
all the Taxes,	94: 90		
Highway deficiencies,	19: 40		
	3314: 30 X		
	3669: 19		

S_____, Sept. 1, 18 .

VIII. Form of Warrant when the Highway Surveyors are authorized by towns to collect the Highway Taxes not worked out.—See page 51.

W _____, ss. To A. B. a Highway Surveyor of the town of S. in the county of W_____, GREETING.

In the name of the Commonwealth of Massachusetts; you are required to collect of the several persons named in the list herewith committed unto you, each one his respective proportion therein set down, of the sum of _____ dollars, voted by the inhabitants of said town on the first Monday of March last, for repairing and amending the highways, town-ways, and bridges in said town.

* Stat. 1785, ch. 50. § 6.

For a man, cents an hour or day.

For oxen, _____

For a plough, _____

For a cart, _____

And you are to make an exhibit of this warrant, with your doings thereon, to the Selectmen or Assessors on the first Monday of July next, and to complete and make up an account of your collections of the whole sum, on or before the _____ day of _____; and if any person shall refuse or neglect to pay _____ the sum he is assessed in the said list, to distrain the goods or chattels of such person to the value thereof; and the distress so taken, to keep for the space of four days, at the cost and charge of the owner; and if he shall not pay the sum so assessed within the said four days, then you are to sell, at public vendue, the distress so taken, for the payment thereof, with charges; first giving forty-eight hours' notice of such sale, by posting up advertisements thereof in some public place in the town, and the overplus arising by such sale (if any there be besides the sum assessed) and the necessary charges of taking and keeping the distress, you are immediately to restore to the owner; and for the want of goods or chattels, whereon to make distress (besides tools or implements necessary for his trade or occupation, beasts of the plough necessary for the cultivation of his improved lands, arms, utensils for house-keeping necessary for upholding life, bedding and apparel necessary for himself and family) for the space of twelve days, you are to take the body of such person, so refusing

or neglecting, and him commit unto the common gaol of the county, there to remain until he pay the same, or such part thereof as shall not be abated by the Assessors, for the time being, or the County Commissioners for the said county.

Given under our hands and seals at said S. by virtue of the vote of the town aforesaid, this day of May, A. D. 1825.

M. T. }
L. R. } *Assessors of*
M. S. } S——.

IX. Commitment of the Highway Tax to the Surveyor of Highways.—See page 51.

To A. B. one of the Surveyors of Highways of the town of G——.

The following is the rate-bill of the Highway Taxes of the persons against whose names they are set, which you are directed to be laid out in labour and materials, upon the highways and bridges within the limits assigned you by the Selectmen. And you are to cause one half at least of said sums to be laid out before the first day of July next ; and you will make an exhibit of this rate-bill, with an account of all monies that have been expended by you on the public ways to the Selectmen or Assessors, on the first Monday of July next. And at the expiration of your term you will make a return of this rate-bill with your doings thereon, and account for all monies by you received or expended on the public ways. You will allow for work at the following rates :

Man, cents—by the hour or day.

Yoke of Oxen,

Plough,

Carts,

HIGHWAY TAX.

	No. of Polls.	Poll Tax.	Real.	Personal.	Total.
A. B.	1	0 : 55	9 : 70	5 : 40	16 : 65

Given under our hands at G. this — day of —,
A. D. 18 .

M. T. }
L. R. } *Assessors*
M. S. } *of G—.*

X. Notice to be posted by the Assessors, when the Treasurer is the Collector.—See page 57.

The Assessors of the town of B. give notice that they have delivered to the Town Treasurer, a correct list of the taxes, together with a warrant in due form of law for collecting the same, and that by a vote of the town all persons who shall voluntarily pay the Treasurer at his office, a discount will be made on their taxes as follows:

Such as pay within 30 days,	per cent.
within 60 days,	per cent.
within 120 days,	per cent.

Copy of the second section of the Act in addition to the several laws now in force, providing for the collection of Taxes.

“All the inhabitants of such towns, who shall voluntarily pay the said collector, or his deputy, within thirty days next after the delivery of their tax bills, the amount of their respective taxes, shall be entitled to an abatement of such sum as said town at their annual meeting may agree upon, on the amount of their said taxes; and all such inhabitants as shall voluntarily pay their taxes to the said collector or his deputy, within sixty days after the delivery of their tax bills, shall be entitled to an abatement of such sum as may be agreed upon as aforesaid, on the amount of their said taxes; and all such inhabitants as shall voluntarily pay to the said collector or his deputy, within one hundred and twenty days after the delivery of their tax bills, shall be entitled to an abatement on the amount of their said taxes, of such sum as may be agreed upon as aforesaid.”

B—, May 20, 1825.

J. S. }
X. Y. } *Assessors of*
Z. Q. } *the town of*
 } B—.

A tax for a school district, or any other corporation,

should be levied in the same manner as town taxes are. The rule for assessing a State tax always depends upon the Act ordering the same. The amount to be placed upon the polls is fixed, generally at 11 cents, and all other taxes must be made conformable to the rules of the last tax act. The act of March 4th, 1829 is to be construed as supplementary, to the tax act of Feb. 24, 1824.

AUCTIONEERS.

It is unnecessary here to insert any form of their appointment, and mode of keeping their accounts, as no correct accountant can mistake in this matter. For the forms of their bonds and returns to the state treasurer, blanks are furnished at the treasury office, and none others are received there. We however insert the form of the return :—

We have perhaps, been unnecessarily minute in prescribing these rules. It was objected to our first edition, that it was deficient in this particular. The subject interests our whole community, and is annually carried to the homes and personal interests of every individual, and it is not to be disguised, that it has been involved in an unaccountable mystery, into which only a favoured few of each town were initiated. From the great sums annually expended in public education, it is remarkable that no practical rules for assessing taxes, are to be found in any of the multitude of school books, that every season inundate our villages. Even in that splendid work, that has recently poured a flood of light upon the science of numbers, rendering the most abstruse questions in arithmetick, plain and simple to the feeble apprehension of children, by the principles of induction ; no *practical* mode is suggested for obtaining a correct solution of the questions upon this branch of science. In Colburn's Sequel, Sect. XXVIII, Problem 32, of the Miscellaneous Examples, a tax is supposed ; the valuation of the town is given ; and the question is, how much is to be assessed upon the dollar ? In pursuance of the rule furnished by the learned Editor, the answer is given in "*the Key*" at 0.0339. By multiplying the whole valuation by this sum, the product will be found to fall short of the sum voted by the town, by several dollars.

Nor would the evil be remedied by diminishing the decimal, unless so many figures were introduced as would render the computation impracticable for one board of assessors to accomplish, before the claimants upon the treasury, would imperiously demand a completion of their labours.

THE ACCOUNT

Of E. K. of S. Auctioneer, with the Treasurer of the Commonwealth, from the first day of June to the last day of December, 1825, inclusive, agreeably to the laws imposing a duty on sales at auction.

Date.	General description of Property sold.	Amount of Personal Estate.	Amount of Real Estate and Vessels.	Rate of Duty	Amount of Duty.
-------	---	----------------------------------	--	--------------------	-----------------------

E. K. Auctioneer.

S—, Dec. 2, 1825.

[The Account must be subscribed by the Auctioneer.]

Form of the Oath.

I, *E. K.* do solemnly and sincerely declare and affirm that the Account to which I have subscribed my name, contains a just and true statement of the amount of all the real and Personal Estate, sold or struck off, by me, at public sale, or sold by me at private sale, on commission, or whereof any part or parcel has been sold or struck off, by me, at public sale, with the design and effect to ascertain and fix a price for the whole, or any part thereof, subject to a duty, pursuant to the laws imposing a duty on sales at auction, within the time mentioned in said account; and that I have carefully examined all entries and memoranda of sales made by me, at auction, and at private sale, on commission, within the time mentioned in said account, and that this account exhibits the whole amount thereof, liable to pay a duty, pursuant to the laws aforesaid, according to my best knowledge, information and belief.

E. K. Auctioneer.

W. ss. 18 Personally appeared the above named *E. K.* and made solemn that the above declaration by subscribed, was just and true.
Before me, *Just. of Peace.*

[The above Declaration must be subscribed by the Auctioneer.]

COLLECTORS OF TAXES.

I. Advertisement of Lands liable to be sold for the payment of Taxes.

The proprietors or owners of the following tracts of land, in the town of S. in the county of W. are notified that the same are taxed in the tax-bills committed to the subscriber, a collector of taxes for said town of S. for the year of our Lord , in the sums following.

For the manner of describing the lots and the owners—see page 68
Title COLLECTORS.

And if no person shall appear to discharge said taxes on or before the *seventh* day of *July* next, at *ten o'clock in the forenoon* I shall then proceed to sell, at the town-house in said S. at public auction, so much of said respective lots of land as shall be sufficient to discharge said taxes and all intervening charges.

A. B. Collector.

S. 18 .

[Distinguish between resident and non-resident proprietors.]

Deed by a collector of non-resident land sold for taxes.

To all to whom these presents shall come ; I, A. B. a collector of taxes for the town of C. in the county of D. and Commonwealth of Massachusetts, for the year of our Lord one thousand eight hundred and legally chosen and sworn, send GREETING. Whereas the assessors of the town of C. aforesaid have assessed C. D. of F , the sum of *one dollar and eighty cents* for a tax as a [non resident] proprietor of land in said C. in the list of assessments, they have committed to me to collect, and whereas no person has appeared to discharge the said tax, although I have advertised the same in the public newspapers of the printers to the General Court, three weeks successively, and posted the same in a conspicuous place in the town of C. for the term of three weeks previous to the time appointed for the sale, and also in the towns of X. Y. Z. three towns adjoining to the town of C—. Therefore know ye, that I the said A. B. collector

of taxes as aforesaid, in consideration of the sum of to me paid for discharging the said taxes, and necessary intervening charges, by G. H. of C. in the county of _____ (*addition*) do hereby give, grant, sell, and convey to the said G. H. his heirs and assigns forever, the following described real estate, being a part of the lot taxed as aforesaid, viz.

the same having been struck off to the said G. H. after waiting two hours from the time appointed for the sale, he being the highest bidder therefor, at a public auction notified and held at the house of O. P. in said C. on the (third) day of (May instant.) To have and to hold the same to the said G. H. his heirs and assigns forever, to his and their use forever; subject however to the right of redemption of the proprietor or owner thereof, at any time within two years from the time of sale, as aforesaid. And I do covenant with the said G. H. his heirs and assigns, that I gave notice of the intended sale of the said lands according to law and that I have observed the directions of the law in all respects in the premises. In witness whereof I do hereunto set my hand and seal this day of A. D.

III. *Application to a Justice of the Peace for a Warrant to distrain for taxes on improved lands, the owner whereof does not reside in the town where said lands lie.—See page 73.*

To M. S. one of the Justices of the Peace for the county of . Shews, D. W. Collector of Taxes in the town of S. in said county.

The following is a true copy of a tax committed to me to collect against J. K. of L. in said county, Esquire, for a lot of improved land lying within the said town of S. as a non-resident proprietor thereof.

STATE, COUNTY AND TOWN TAXES.

	No. of Acres.	Value.	Tax.
J. K. of L.	50	\$900	4, 74

And that there is no stock, corn, or hay, to be found on said , (lot or land) whereof he may make distress to satisfy the same; he therefore requests that you would grant a warrant unto the constable of the said town of L. to distrain the goods or chattels of the said A. B. sufficient to satisfy said tax and charges, agreeably to an Act of the Commonwealth in such cases made and provided.

Dated at this day of , A. D. 18 .

IV. *Warrant on the foregoing application.*

(L. S.) ss. To J. L. one of the constables of the town of C. in said county, GREETING.

Whereas C. D. of C. in said county, a collector of taxes, duly chosen by the inhabitants of said town of C. for the year hath made application in writing to me, one of the justices of the peace for the county of W. shewing that G. H. of F. in the county of is taxed in the list of assessments committed to him to collect for the year one thousand eight hundred and for the tax, the sum of *one dollar and eighty cents* for certain improved lands owned or occupied by the said G. H. according to an authenticated copy of said tax in my hands, and that there is no stock, corn or hay to be found on said land whereof he may make distress to satisfy the same.

You are therefore required in the name of the Commonwealth of Massachusetts forthwith to distrain the said G. H. by his goods or chattels in the full sum of *one dollar and eighty cents* as aforesaid, and pay the same to the said C. D. by sale of such goods or chattels with more for this warrant, and thereof also to satisfy yourself for your own fees, returning the overplus if any there be, to the said G. H. and for want of goods or chattels sufficient to satisfy the aforesaid sums shewn to you or found within your precinct; we command you to take the body of the said G. H. and him commit unto our jail in W. And we command the keeper thereof accordingly to receive the said G. H. and him safely to keep, until he pay the full sum above mentioned, with your fees, or that he be otherwise discharged by order of law: hereof fail not, and make return of this warrant, with your doings therein, unto our said justice, within thirty days next

coming. Witness our said justice at the
year of our Lord one thousand eight hundred and
A. B. Justice of the Peace.

IV. Certificate to be made upon the copy of a warrant to be given to the Keeper of a Prison, when a person is committed for Taxes.

P , 18 .

I hereby certify, that is the sum which A. B. now committed to prison, is to pay, as his proportion of the assessment within mentioned, and that I have taken and committed him to gaol, for want of goods or chattels whereon to make distress for the same; the costs of which taking and committing is

G. W. Collector.

V. Form of Account to be made where Collector sells a distress taken for the payment of Taxes.—See page 74.

Account of the sale of a lot of Hay belonging to S. L. of S. taken, distrained, and sold by me, for the payment of his taxes, in the bills committed to me to collect, for the year 1824.

25. cwt. Hay, sold to C. M. for	- - - - -	\$19 80
S. L.'s State, county, and town Tax.		
Poll,	- - - - -	1 49
Real,	- - - - -	6 40
Personal,	- - - - -	3 30
	—————	\$11 19

Charges,		
Travel, 5 miles,	- -	0 20
Commissions, at 4 per cent.		0 44
Carting the hay,	- -	1 75
Weighing,	- - - -	0 25
Loading the hay,	- -	0 50
Advertising and selling,	0 50	3 69
		15 88

Overplus money returned to S. L.	\$3 92
B. F. Collector of S.	

S—, Febr'y 5, 1825.

VI. Form of Return to be furnished by the Collector to the Selectmen to enable them to make a list of Voters.—See page 93, sec. xxiii.

The following is an accurate and true account of those

persons who have paid me a State or county tax, within the year next preceding the date hereof.

<u>Names.</u>	<u>Time of Payment.</u>	
L. A.	Sept. 1, 1829.	
J. B.	" 3.	
J. C.	" 4.	
S. D.	" 5.	
W. ———.	Feb. 1830.	Collector.

CONSTABLES.

I. Manner of notifying Town-Meetings or Parish Meetings must be such as the town or parish may order. The proper mode is to post up attested copies of the Warrant, and to preserve the original, to be returned to the Town-Meeting, or Parish Meeting.

FORM OF RETURN.

E. ss. March 4, 1822.

I served the within warrant, by posting up attested copies thereof at each of the public meeting-houses in said town, fourteen days before the time of holding this meeting.

M. B. Constable of A.

II. Notification to a person drawn as a Jurymen.

E. ss. To A. B. of B.

You are hereby notified that on the day of instant, you was drawn to serve as a Juror, at the Court of Common Pleas, to be holden at S. within and for said county, on the day of , and you are notified to attend said Court on the second day of its sitting, at ten o'clock, A. M.

M. B. Constable of A.

III. Return to be made on a Venire for the appointment of Jurors.

W. ss. B. 1825.

I have notified and warned each of the freeholders and

other inhabitants of the town of B. aforesaid, as are qualified by law to vote in the choice of Representatives, and particularly the Selectmen and Town Clerk, to assemble, as within directed to appoint, as the law directs, one man to serve as a Traverse juror, and one man to serve as a Grand Juror, at the within mentioned Court; and A. B. was appointed to serve as a Traverse Juror; and C. D. was appointed to serve as a Grand Juror. And I have notified and summoned them four days before the sitting of said Court, to appear and attend the same accordingly.

{ Constable of the town of

FEEs.	
Service, - - -	\$0 25
Travel, miles,	
	<hr/>
	\$

Constables will be particular to insert the *date*, in the blank returns, which should be the date of the *drawing* of the Jurors ; and the time when they were notified is of no consequence in the above return, if it appears to have been done four days previous to the sitting of their Court.

The other duties of Constables, the forms of the returns, &c. being the same both in civil and criminal actions with those of Sheriffs, it has not been thought advisable to incumber this work with them.

ENGINE-MEN.

I. Appointment.—See pages 91—210.

The Selectmen of the town of B. hereby appoint A. B. C. D. E. F. &c. to be enginemen within said town, during the will and pleasure of the Selectmen, and they are to be attached to Engine No. 3.

Given under our hands this day of A.
 } *Selectmen*
 } *of B—.*

II. *Certificate to the Militia Officers.*

To Capt.

The Selectmen of the town of B. hereby certify that the following persons who reside within your company bounds, have been duly appointed by us this day as Engine-Men, within said town, viz. A. B. C., &c.

B.

} *Selectmen*
} *of B—.*

FENCE VIEWERS.

1. *Request of the owner of a lot of land to the Fence Viewers, to survey the fence between his land and an adjoining close.—See page 96.*

To N. W. and J. P. two Fence Viewers of the town of S.

The fence between my land and that of R. H. in said S. is ruinous, insufficient, and not according to law: this is to request you to view and survey the same, and to direct him to repair or rebuild the same.

S.

1825.

I. G.

II. *Notice to the adverse party.—See page 96.*

To R. H. of S.

I. G. of said S. has complained to us, two of the Fence Viewers of said town, duly chosen and sworn, that the fence between his lot and yours adjoining, in S. is ruinous, and has requested us to view and survey said fence, that you may be directed to repair and amend the same. You are hereby notified that we shall proceed upon the duties assigned us, to-morrow at nine o'clock, A. M.

N. W. } *Fence Viewers.*
J. P. }

III. *Award of the Fence Viewers.—See page 96.*

To R. H. of S.

Having viewed and surveyed the fence between your in-

N. W. } *Fence Viewers of*
J. P. } *the town of S.*

The undersigned, two Fence Viewers of the town of S. duly chosen and sworn, having heretofore viewed and surveyed a certain fence, between the inclosure of I. G. and R. H. in said S. and after having adjudged the same to be insufficient and illegal, did order and direct that the said R. H. should repair or rebuild the same within six days from the date of our said order, of which the said R. H. wholly regardless of the said order and direction, did not proceed to repair or rebuild said fence within the time limited to him as aforesaid; whereupon the said I. G. at his own proper costs and charge has repaired and rebuilt the same—and we now appraise the said fence at the sum of dollars. And we certify that our fees for attending that service are as follows:—

For viewing said fence one hour, <i>twenty five cents each,</i>	0 50
For appraising the same, half a day, <i>two shillings and eight pence each,</i> - - - - -	0 89

Paid us by the said I. G. - - - - - \$ 1 39

N. W. } *Fence Viewers.*
J. P. }

S—, June 1, 1825.

V. Notice of Fence Viewers on application of a party when the right of occupants, in Partition Fences is in dispute.
—See page 97. sec. 3.

To _____.

M. N. has represented to us the subscribers, two of the Fence Viewers of the town of P. duly chosen and sworn, that a dispute has arisen between him and you, respecting

your several rights in the partition fence between your land and his, (*or*, the land occupied by him and you, at , *or*, from , to , *as the case may be*,) and has made application to us on that account; we do therefore hereby notify you, that we shall be at on the day of , at o'clock in the noon, to assign to each party his share of said fence, when and where you will please to attend, if you see cause.

J. B.

J. D.

Dated , 18

VI. *Fence Viewers' assignment of each party's share of a partition fence.*

Whereas a dispute has arisen between A. B. of , and C. D. of , about their respective rights in a partition fence in the line between their lands or farms, at , (*or* from to) we the subscribers, fence viewers of the town of F. duly chosen and sworn, having, on the application of the said A. B. (and after having given due notice to the said C. D.) viewed the premises and duly considered the matter in dispute, have assigned, and do hereby assign to each of the said parties his share of said fence, as follows, viz.

The said A. B. shall build and keep in repair, a good and sufficient fence from , *or*, from to . And the said C. D. shall build and keep in repair a like fence on the other part of said line, viz. from to .

Given under our hands at said F. this day of 18 . J. B.
J. D.

VII. *Notice of Fence Viewers on application of a party whose land is divided from another's by a brook, river, pond, or creek.*

To — of

M. N. of , has represented to us the subscribers, Fence Viewers of the town of F. that you refuse to join with him, (*or*, that you and he cannot agree, *as the case*

may be) in making a partition fence between your land and his, (*or, between the lands occupied by him and you, the same being bounded or divided by a pond, river, brook, or creek, as the case may be*) and has therefore made application to us to view the same, and determine thereupon ; we therefore hereby give you notice that we shall attend that service on the day of , at o'clock, when and where you will be present, if you see fit.

Dated the day of 18 .

J. B.

J. D.

VIII. Determination of Fence Viewers as to a Partition Fence on the lands of different persons, bounded or divided by a river, brook, pond, or creek.

It has been represented to us, the subscribers, two of the Fence Viewers of the town of F. duly chosen and sworn, by A. B. of , whose land is bounded or divided from the land of , (*or occupied by C. D.*) that the said C. D. hath refused to join with him , (*or, that they could not agree in making a partition fence, as the case may be,*) and the said A. B. having applied to us to view the same and determine thereupon, we have, after giving due notice to the said C. D. attended that service, and do determine, that the said pond, river, brook or creek, does answer the purpose of a sufficient fence, (*or, as the case may be, does not answer the purpose of a sufficient fence,*) and that it is impracticable to fence at the boundary line, we therefore determine that said fence shall be set up as follows, viz.

And that the said A. B. shall build and maintain , and the said C. D. shall build and maintain .

Given under our hands, this day of 18 .

J. B. }
J. D. } *Fence Viewers.*

IX. *Application to Fence Viewers, by a party owning land which had been improved in common with another occupant, for a division of the same.*—See page 90. sec. v.

To J. B. and J. D. two of the Fence Viewers of the town of F.

C. D. and myself, having heretofore improved our lands in common, I am desirous to have a partition fence between my lot at and that of , (or now occupied by C. D.) and to improve my part in severalty, and he has refused, (or neglected) to divide the line where the fence ought to be built: I do therefore request that you would divide the same, and assign to each party his share thereof, according to law.

A. B.

Dated , 183 .

X. *Notice of Fence Viewers to a party, on the application of another with whom he had improved in common, and is desirous to improve in severalty.*

To C. D. of

*A. B. of F. has represented to us, the subscribers, Fence Viewers of said town of F. that he is desirous of having a partition fence between his land at , and yours, which you have hitherto improved in common, and to improve his part in severalty, and that you refuse (or neglect) to divide the line where such fence ought to be built, and hath therefore requested us to divide and assign the same. This is therefore to give you notice that we shall attend that service at , on the day of , at of the clock in the noon, when and where you may be present, if you see fit.

J. B.

J. D.

Dated the day of 182 .

XI. *Fence Viewers' assignment of a Division Fence between two persons who had before improved lands in common.*

*Whereas A. B. of F. hath represented to us, the subscribers, two of the Fence Viewers of said town, duly

hosen and sworn, that he is desirous of improving in severalty, a certain parcel of land, [here describe the same] which he hath hitherto improved in common with , a certain piece, &c. belonging to C. D.) and to have a partition fence between them, and that the said C. D. hath refused (or neglected) to divide the line where the fence ought to be built, and hath therefore requested us to divide the same, and to assign to each party his share thereof, according to law.

We therefore, having given due notice to the said C. D. have divided and assigned the said line, as follows, viz.

The said A. B. shall build and maintain a fence on the one, running from to . And the said C. D. shall build and maintain a fence on the other part of said line, viz. from to . And we do hereby assign the term of from the date hereof, for making up said fence, whereof the several parties aforesaid are to take notice.

Given under our hands and seals this day of 1883 .

J. B.

J. D.

II. *Fence Viewers' appraisalment of the value of a Partition Fence.*

* We the subscribers, Fence Viewers of the town of F. duly chosen and sworn, having been requested by to appraise his part of a partition fence, between his lands at , which have been under improvement, at which he now chooses to lay in common, and land of have viewed the same, and do determine the value of the same to be

J. B.

J. D.

Dated day of 1882 .

XIII. *Agreement between two parties owning contiguous lots, to divide the fence between them without the intervention of Fence Viewers, under the statute of 1822, ch. 60.—See page 100 sec. vii.*

Memorandum of an agreement made this third day of May, A. D. 1825, by and between T. H. B. of S. on the

one part, and D. F. M. of S. on the other part, **WITNESSETH,**

That whereas there is a division fence needed on the line that divides the B. pasture of the said T. H. B. and the N. lot of the said D. F. M. in said S. it is now agreed that the northerly half of said fence shall be erected and supported by said T. H. B. and the southerly half thereof by the said D. F. M. And this agreement being recorded in the office of the Town Clerk of the said town of S. shall be perpetually binding upon the several owners of the said lots, their heirs and assigns forever.

Witness our hands and seals, the day and year aforesaid.

Attest,
E. P.

T. H. B. (L. s.)
D. F. M. (L. s.)

FIELD DRIVER.

I. Notice to be given when a beast impounded is taken up doing damage, and the owner is known.

S—, May 10, 1829.

To Mr. W. F.

I have this day taken up and impounded in the town pound under the care of R. H. pound keeper, one white horse belonging to you, found doing damage in the inclosure of N. W. and for that cause said horse is impounded. The damage demanded is *one dollar*, and the Field Driver's fees, *sixteen cents*.

D. N. *Field Driver of the town of S.*

II. When taken up for running at large.

S—, May 10, 1829.

To Mr. W. of S.

I have this day taken up and impounded, in the town pound, under the care of R. H. pound keeper, one bay horse, belonging to you, found running at large out of your inclosure, without a keeper, upon the public highway, within said town; and for that cause said horse is impounded.

The penalty for said horse being at large is *fifty cents*, and the Field Driver's fees, *sixteen cents*.

D. N. Field Driver of S.

III. *Memorandum to be left with Pound Keeper.*

To R. H. keeper of the town pound, in the town of S—.

I have this day taken up and impounded, in the town pound under your care, one white horse, the property of W. F. of said S. found doing damage in the inclosure of N. W. of said S. The damage demanded is *one dollar*, and my fees, *sixteen cents*.

If found at large, then say "found running at large without a keeper, out of the inclosure of said W. F. upon the public highway in said town."

D. N. Field Driver.

S—, May 10, 1829.

IV. *Notice (in case the owner is unknown) to be posted up in some public places within the town, and in such adjoining towns as are within four miles.*

Taken up this day, (doing damage in the inclosure of J. R.) and impounded in the town pound in P. one red Cow, with short horns, the owner whereof is unknown.*

A. B. Field Driver.

V. *Notification to be left with the Town Clerk by a person taking up a Ram, when the owner is unknown. A like notice is also to be posted up in the town, within twenty-four hours.*

Found running at large, taken up, and now in my custody, a white Ram, (of the native breed,) having a crop

No fees appear to be provided for taking up *neat stock* at large; the penalty perhaps was considered sufficient.

Unless *horses* are taken up between the 15th of April and the first of November, no fees appear to be provided for the Field Driver, but the owner is subject to the penalty only.—Stat. 1788, ch. 65. § 2.—1804, ch. 44.—1817, ch. 143.

* In this case, if the owner does not appear within three days after the impounding, then the Field Driver or other person taking up the beast must proceed with it as a stray, for which proceeding see under Town Clerk, page 216—also 111.

upon the right ear, belonging to some person unknown. The owner is requested to call and comply with the requisitions of the law.

N. R.

L—, 18 .

MEASURERS OF WOOD AND BARK.

The following Table, extracted from FREEMAN'S TOWN Officer, may be convenient.

 This table is computed for wood eight feet in length ; if it measure more or less, allowance must be made accordingly.

EXPLANATION.

The Table (as will be observed) is in two parts ; the first containing at top, the dimensions of the height or width of a load, from 3 feet 3 inches to 3 feet 10 inches ; the other from 3 feet 11 inches to 4 feet 6 inches. The first column is the same in each.

NOTE.—*The parts of a foot are twelfths, and may be reckoned thus, viz. 2 is equal to one sixth ; 3, one quarter ; 4, one third ; 6, one half ; 8, two thirds ; and 9, three quarters of a foot.*

Use. Look in the first or left hand column for the width, and at the top for the height ; (or you may find the height at the first column, and the width at top.) On the line against the one, and in the column under the other, is the contents of the load.

Example 1. A load measuring three feet five inches wide, and three feet nine inches high, contains 6-4, or six feet and one third of a foot. This is found by the first part of the table.

Example 2. A load, measuring three feet eleven inches one way, and four feet four inches the other, contains (as you will see by the second part of the Table) 8-6, or eight feet and a half.

For the use of those who may wish to have an easy method of computing the contents of a load of Wood or Bark, without the help of a table, which may not always be at hand, I here subjoin the following

RULE.

Multiply by the rules of cross multiplication, the height by the width, or the width by the height, and halve the product.

NOTE. *In this way of multiplying, inches multiplied by inches, produce twelfth parts of inches; inches multiplied by feet, or feet by inches, produce inches; and feet by feet, produce feet.*

TABLE.

F. 1.	3 3	3 4	3 5	3 6	3 7	3 8	3 9	3 10
2	3 3	3 4	3 4	3 6	3 6	3 8	3 9	3 9
2 1	3 4	3 6	3 6	3 8	3 9	3 9	3 9	4
2 2	3 6	3 8	3 8	3 9	3 9	4	4	4 2
2 3	3 8	3 9	3 9	4	4	4 2	4 3	4 4
2 4	3 9	4	4	4	4 2	4 3	4 4	4 6
2 5	4	4	4	4 2	4 3	4 4	4 6	4 8
2 6	4	4 2	4 3	4 4	4 6	4 6	4 8	4 9
2 7	4 2	4 4	4 4	4 6	4 8	4 9	4 9	5
2 8	4 4	4 6	4 6	4 8	4 9	5	5	5 2
2 9	4 6	4 6	4 8	4 9	5	5	5 2	5 3
2 10	4 8	4 9	4 9	5	5	5 2	5 4	5 6
2 11	4 9	4 9	5	5	5 3	5 4	5 6	5 6
3	5	5	5	5 3	5 4	5 6	5 8	5 9
3 1	5	5	5 3	5 6	5 6	5 8	5 9	6
3 2	5 3	5 4	5 6	5 8	5 9	5 6	6	6
3 3	5 3	5 6	5 6	5 8	5 9	6	6	6 3
3 4	5 4	5 6	5 8	5 9	6	6	6 3	6 4
3 5	5 6	5 8	5 9	6	6	6 3	6 4	6 6
3 6	5 8	5 9	6	6	6 3	6 6	6 6	6 8
3 7	5 9	6	6	6 3	6 6	6 6	6 9	6 9
3 8	6	6	6 3	6 6	6 6	6 8	6 9	7
3 9	6	6 3	6 4	6 6	6 9	7	7	7 2
3 10	6 3	6 4	6 6	6 8	6 9	7	7 2	7 4
3 11	6 4	6 6	6 8	6 9	7	7 2	7 4	7 6
4	6 6	6 8	6 9	7	7 2	7 4	7 6	7 8
4 1	6 8	6 8	7	7 2	7 4	7 6	7 9	7 9
4 2	6 9	7	7 2	7 3	7 6	7 8	7 9	8
4 3	7	7	7 3	7 6	7 6	7 9	8	8 2
4 4	7	7 3	7 4	7 6	7 9	8	8 2	8 4
4 5	7 2	7 4	7 6	7 8	8	8	8 3	8 6
4 6	7 4	7 8	7 8	7 9	8	8 3	8 6	8 8
4 7	7 6	7 8	7 9	8	8 3	8 4	8 6	8 9
4 8	7 6	7 9	8	8 2	8 3	8 6	8 8	9
4 9	7 9	8	8 2	8 3	8 6	8 8	8 9	9
4 10	7 9	8	8 3	8 6	8 8	8 9	9	9 3
4 11	8	8 2	8 4	8 6	8 9	9	9 2	9 4
5	8 2	8 4	8 6	8 9	9	9 2	9 4	9 6

TABLE.

F. I.	3 11	4	4 1	4 2	4 3	4 4	4 5	4 6
2	4	4	4 1	4 2	4 3	4 4	4 4	4 6
2 1	4	4 2	4 3	4 4	4 4	4 6	4 6	4 8
2 2	4 2	4 4	4 4	4 6	4 8	4 8	4 9	4 9
2 3	4 4	4 6	4 6	4 8	4 9	4 9	5	5
4	4 6	4 8	4 8	4 9	5	5	5 2	5 3
2 5	4 8	4 9	5	5	5 2	5 3	5 4	5 6
2 6	4 9	5	5	5 2	5 3	5 4	5 6	5 8
2 7	5	5 3	5 3	5 4	5 6	5 6	5 8	5 9
2 8	5 3	5 4	5 6	5 6	5 8	5 9	6	6
2 9	5 4	5 6	5 8	5 8	5 9	6	6	6 2
2 10	5 6	5 8	5 8	5 9	6	6 2	6 3	6 4
2 11	5 8	5 9	6	6	6 2	6 3	6 6	6 6
3	5 9	6	6	6 3	6 4	6 6	6 8	6 9
3 1	6	6 2	6 3	6 6	6 6	6 8	6 9	7
3 2	6 2	6 4	6 6	6 8	6 9	6 9	7	7 2
3 3	6 4	6 6	6 8	6 9	6 9	7	7 2	7 4
3 4	6 6	6 8	6 9	7	7	7 2	7 4	7 6
3 5	6 8	6 9	7	7	7 3	7 4	7 6	7 8
3 6	6 9	7	7	7 3	7 6	7 6	7 8	7 9
3 7	7	7 2	7 3	7 6	7 6	7 9	8	8
3 8	7 2	7 4	7 6	7 6	7 9	8	8	8 3
3 9	7 4	7 6	7 8	7 9	8	8 2	8 3	8 6
3 10	7 6	7 8	7 9	8	8 2	8 4	8 6	8 6
3 11	7 9	7 9	8	8 2	8 4	8 6	8 8	8 9
4	7 9	8	8 2	8 4	8 6	8 8	8 9	9
4 1	8	8 2	8 4	8 6	8 8	8 9	9	9 2
4 2	8 2	8 4	8 6	8 8	8 9	9	9 2	9 4
4 3	8 4	8 6	8 8	8 9	9	9 3	9 4	9 6
4 4	8 6	8 8	8 9	9	9 3	9 4	9 6	9 9
4 5	8 8	8 9	9	9 2	9 4	9 6	9 9	10
4 6	8 9	9	9 2	9 4	9 6	9 9	10	10 2
4 7	9	9 2	9 4	9 6	9 9	10	10 2	10 3
4 8	9 2	9 4	9 6	9 9	10	10	10 3	10 6
4 9	9 3	9 6	9 9	10	10 3	10 6	10 9	10 8
4 10	9 6	9 9	10	10 3	10 6	10 9	11	11 3
4 11	9 9	10	10 2	10 4	10 6	10 9	11	11 3
5	9 9	10	10 2	10 4	10 6	10 9	11	11 3

OVERSEERS OF THE POOR.

I. *Notice by an inhabitant of the town that a poor person is in need of relief.*

To the Overseers of the Poor of the town of B.

Gentlemen.—W. O. of S. is now sick at my house, and in need of immediate relief—this is to request you to make suitable provision for his comfort, as I shall consider his expenses chargeable to the town. Yours,

Z. O.

II. *Notice from the town of T. where a person is in distress to the town of S. where he is lawfully settled.**

To the Overseers of the Poor of the town of S.

Gentlemen—S. R. and his wife, whose lawful settlement is in S. are now in this town, sick and in need of assistance. We have furnished them relief to the amount of dollars, which you are requested to pay, and cause the removal of said paupers, as they are now the proper charge of your town. Yours, &c.

T. Jan. 1, 1825.

} *Overseers of the
Poor of the town
of T.*

III. *A denial of Settlement, in answer to the above.*

To the Overseers of the Poor of the town of T.

Gentlemen—Yours of the 1st inst. respecting the support of S. R. and wife, was duly received. Upon due inquiry, we are satisfied that this town is not the place of lawful settlement of the said S. R. and wife. We therefore shall not cause their removal, nor contribute any

* A notice sent by mail, with the postage paid, and marked upon the letter, shall be sufficient. Stat. of March 4, 1829.

thing towards their support.* Respectfully yours, &c.
S. January 20, 1829.

{ Overseers of the
{ Poor of the town
{ of S.†

IV. Complaint to a Justice of the Peace by the Overseers of the Poor, to effect the removal of a Pauper to his place of settlement.

To R. B. T. a Justice of the Peace, in and for the county of W.

The town of B. in the said county, by the subscribers, Overseers of their Poor, complain and shew, that X. Y. now resident in said town, is poor, and become chargeable to said town; and that his lawful settlement is in S. in the county of W. Wherefore your complainants pray that after a due course of proceedings had, the lawful settlement of said X. Y. may be adjudged to be in said town of S. and that he may be removed thither by warrant accordingly. Your complainants further pray judgment for damages, for expenses incurred on account of said X. Y. an account whereof is annexed, and for such as may accrue until the time of judgment, and for costs.‡
Dated at said the day of A. D. 182 .

A. B. &c. Overseers.

V. Complaint to a Justice of the Peace, and application for the removal of a Poor Person not belonging to the Commonwealth, to another State, or to a place beyond sea.

*Complain B. T. P. W. and S. M. Overseers of the

* In these notes and answers, the overseers should communicate to their sister towns, such facts as have come within their knowledge relative to the subject in question. For example, where the pauper was born, where he has resided, and what property he has possessed in various towns. Much labour might be saved, and perplexity removed by these acts of comity between towns.

† A notice sent by mail, with the postage paid, and marked upon the letter, shall be sufficient. Stat. of March 4, 1826.

‡ In the complaint, and also in the adjudication, for the removal of a pauper, it is necessary to state the reasons why he may become chargeable.—Mass. Rep. viii. 276.

Poor of the town of _____, that they have been obliged to provide for the relief and support of one _____, a poor person now residing in said town, who has no lawful settlement within this Commonwealth, but belongs to _____, and that the said _____ still stands in need of relief, and will be further expensive to said town. They therefore pray that a warrant may be issued for removing the said _____ to the said _____, according to a law of the Commonwealth, in such cases made and provided.

B. T.

P. W.

S. M.

Dated, &c.

VI. *Complaint against the kindred of a pauper, to compel them to contribute towards his maintenance.*

To the honorable the Justices of the C. C. Pleas, to be held, &c.

The inhabitants of the town of R. in the county of W. complain, and inform the court, that A. B. of said R. labourer, is a poor and indigent person, and for a long time heretofore has been wholly supported by the said town of R. at their proper charge, the said town of R. being the place of lawful settlement of said A. B. ; and that they have expended, for the support and maintenance of the said A. B. within six months last past, the sum of _____, as by the bill of particulars hereto annexed.—And your Complainants would further inform this Court that C. B. and O. B. of S. in said county, yeomen, are kindred of said pauper, in the line or degree of children, by consanguinity, *to wit* : sons of said A. B. living within the Commonwealth, and of sufficient ability to support said A. B. or to contribute towards his maintenance. And that the said A. B. has no other kindred living within this Commonwealth liable by law to contribute thereto.

Wherefore your Complainants pray that this Court would assess and apportion the aforesaid sum of _____, expended by the said inhabitants of R. for the support of said A. B. to the time of exhibiting this complaint, upon the said C. B. and O. B. in such proportions as the court

may adjudge reasonable, according to their several ability—together with the costs of this complaint.

And also that said court would assess and apportion upon the aforesaid C. B. and O. B. such further reasonable sum as may be expended for the support and maintenance of the said A. B. from the time aforesaid to the time of making said assessment.

And also that this court would further assess and apportion upon the said C. B. and O. B. such weekly sum as they shall judge sufficient for the future support of said pauper, to be paid quarterly to the inhabitants of the town of R. aforesaid, together with costs.

Dated at R. aforesaid, this day of , in the year of our Lord

The inhabitants of the town of R. by

L. M. } Overseers of
N. O. } the poor of
P. Q. } said town.

VII. Form of an indenture for Overseers of the Poor, to bind out the child of a poor person.—See page 127.

This indenture, made on the day of , by and between A. B. and C. overseers of the poor of the town of W. in the county of M. on the one part, and D. of said M. printer on the other part, WITNESSETH,

That the said overseers of the poor have bound and do hereby bind E. a minor son of F. a poor person, residing in said town, lawfully settled therein, and having become actually chargeable thereto [or whose parents in the opinion of said overseers are unable to maintain said child; or whose parents, residing in said town, are supported there at the expense of the Commonwealth,] unto the said D. as an apprentice, to learn the art, trade, or calling of a printer, [or as a servant, to be employed in any lawful work or labour,] and with him the said D. to serve from the day of the date hereof until the day of , when the said minor will be of the age of 21 years; during all which time the said apprentice [or servant] his said master shall faithfully serve.

And the said D. covenants, on his behalf, to teach and instruct, or cause the said apprentice [or servant] to be

taught or instructed in the aforesaid trade or calling, by the best means in his power. And during all said term to provide for said apprentice [or servant] suitable boarding, lodging, clothing, nursing, attendance, and other necessaries, for his comfortable support in sickness and in health. And further shall cause him to be taught to read, write, and cipher; [and to this end shall allow him to attend the town school in his school district at least weeks in every year during the term, with suitable school books and stationary; together with such other instruction as is suitable to his degree; and shall also furnish him with the military uniform and equipments required by law. And at the end of the term the said D. shall deliver up said E. to the overseers of the poor of said town, for the time being, furnished with two good suits of clothes. And will also then pay the said E. the sum of *one hundred dollars*, for his faithful services]—at which time these indentures shall be cancelled.

In testimony whereof, the parties have hereunto interchangeably set their hands and seals.*

A.	(L. s.)	} Overseers of Poor.
B.	(L. s.)	
C.	(L. s.)	
D.	(L. s.)	

VIII. Form of an indenture for overseers to bind out an idle person over twenty-one years of age.—See page 129.

This indenture, made, &c. by and between [as in the preceding form,]

WITNESSETH,

That said overseers, by virtue of an Act of this Commonwealth, authorizing them to set to work, or bind out to service, all such persons lawfully settled in said town, upwards of twenty-one years of age, as are able of body, and have no visible means of support, and other persons described in said Act,—do hereby bind out to service, to

* The parts of the above indenture that are included in brackets, may be varied so as to meet the agreement of the parties. If the minor is bound as a servant, the words "in the aforesaid trade or calling" may be omitted.†

† It will be noted that there is a wide difference between the powers granted to the overseers of the poor, in this particular, and those given to the selectmen by stat. of 1794, ch. 64, page 183.

D. B. of said town, yeoman, for the term of six months, one A. B. labourer, a person residing in said town, and lawfully settled therein, upwards of twenty-one years of age, able of body, who has no visible means of support, lives idly, and neither uses nor exercises any ordinary or daily lawful trade or business, to obtain a livelihood—during which time the said A. B. shall faithfully serve the said D. B. and obey all his lawful commands, not wasting any of his goods, nor doing any damage to him whatever.

And the said D. B. on his part, doth hereby covenant and engage to pay to the said overseers, for the service of the said A. B. for the term aforesaid, the sum of , to be improved by the said Overseers for the support of said A. B.'s family, (if he have any; if not, say, to be laid out at the discretion of the said overseers, for the use and benefit of the said A. B.)

In testimony whereof, the parties aforesaid have hereunto interchangeably set their hands and seals, the day and year above written.

<i>Signed, Sealed and delivered,</i>	B. T.	(L. s.)	} Overseers of Poor.
<i>in presence of us,</i>	P. W.	(L. s.)	
W. T.	S. M.	(L. s.)	
W. F.	D. B.	(L. s.)	

X. *Form of a certificate to accompany an account against the Commonwealth, for the support of a State Pauper.—*
See page 142.

Commonwealth of Massachusetts to the town of A. **Dr.**

To the amount paid for the support and maintenance of P. Q. a State Pauper, as by the bill of particulars annexed, **\$34 00**

And the Overseers of the Poor of the said town of A. certify that from the best information they can obtain, the said P. Q. was born in the province of Lower Canada, in the year 1755, that he came into this Commonwealth in the year 1777, that he resided at R. in the county of W. where he bought a small dwelling-house, on the 1st of April, 1780, which he sold, January 10, 1786, when he left R. and resided in E. in the county of B. for seven years, without any estate of freehold, &c. &c. And that the said

P. Q. has never gained a settlement in any other town within this Commonwealth, in any of the ways pointed out in an Act passed February 11, 1794, specifying what shall constitute a legal settlement; and that he has no kindred within the Commonwealth obliged by law to support him.

And we further certify, that no part of this account is for the support of any male person over twelve and under sixty years of age, of competent health to labour.

Dated at A—, this day of A. D. 1823.

G. H. } *Overseers of the*
I. J. } *Poor of the town*
L. M. } *of A.*

XI. Application to the Judge of Probate for an inquisition upon a non-compos, idiot or lunatic.

To the Hon. N. P. Judge of Probate, &c.

The subscribers, Overseers of the Poor of the town of B. in said county, represent to the Judge of Probate, that A. B. resident in said B. and legally settled therein, is an idiot, and incapable of taking proper care of himself and his property :

Wherefore your petitioners pray that the Selectmen of said town may be directed to make inquisition thereinto, and certify the same to the Judge of Probate, to the end that some suitable person may be appointed a guardian to said A. B. to take charge of his real and personal estate.

} *Overseers of*
} *the Poor.*

B. 1825.

SELECTMEN.

I. Form of posting up the list of voters.

List of persons in the town of B. qualified to vote in elections, for state, county and town officers, and for Representatives to Congress, as made out by the Selectmen, February 15, 1825.

A. B.
C. D. &c.

The Selectmen give notice that they shall be in session for the purpose of correcting and revising the above list, at on *Saturday*, the day of next, from two o'clock to four o'clock, P. M. And also for the space of one hour next preceding any town meeting held for any of the elections aforesaid, throughout the year.

} *Selectmen*
of

B. February 15, 1825.

After the new choice of selectmen at the March meeting, the above notice should be renewed by the Selectmen; the old *heading* may stand, but the names of the new Selectmen and a new date should be added, when (with corrections) it will be in proper order to be posted previous to every election, through the year.

II. *Warrant for calling the annual Town Meeting.*

(L. S.) *Worcester, ss.*

(L. S.) To either of the Constables of the town of

(L. S.) W. in the county of W.

(L. S.) GREETING.

(L. S.)

In the name of the Commonwealth of Massachusetts, you are directed to notify the inhabitants of the town of W. qualified to vote in elections and in town affairs, to meet at the town Hall in said W. on *Monday*, the day of *March* next, at ten o'clock in the forenoon, then and there to act on the following articles:—*

1. To choose all necessary town officers for the year ensuing.

2. To hear the annual report of the selectmen, and act thereon.

3. To raise such sums of money as may be necessary to defray town charges the ensuing year, and make appropriations of the same.

4. To determine the manner of repairing the highways, town-ways, and bridges, the year ensuing.

* Many Selectmen insert an article *to choose a Moderator*, but it is unnecessary.

5. To see if the town will restrain horses, neat cattle, and swine, from running at large within the limits of the town, the year ensuing.

6. To bring in their votes for a County Treasurer.

7. To ———

And you are directed to serve this warrant, by posting up attested copies thereof, at each of the public meeting-houses in said town, fourteen days at least before the time for holding said meeting.

Hereof fail not, and make due return of this warrant, with your doings thereon, to the Town Clerk, at the time and place of meeting as aforesaid.

Given under our hands and seals, this tenth day of February, in the year of our Lord one thousand eight hundred and twenty.

W. E.	} <i>Selectmen</i> of W.
J. W. L.	
O. C.	
J. G. Jr.	
D. S.	

III. *Constable's Return on said Warrant.*

Worcester, ss. March 5, 182 .

Pursuant to the within warrant, I have notified the said inhabitants of the town of W. to meet at the within time and place, by posting up attested copies of said warrant at each of the public meeting-houses in said town, fourteen days before the date hereof.

L. B. Constable of W.

IV. *Form of Warrant for calling Town-Meeting for voting for Governor, &c.*

(L. S.) To either of the Constables, &c.

In the name of the Commonwealth of Massachusetts, you are required to notify and warn the inhabitants of the town of W. qualified to vote in elections, to meet at the Town Hall, in W. on *Monday*, the day of *November* next at one o'clock in the afternoon, being the second Monday of said month.

And you are directed to serve this warrant, by posting up attested copies thereof, at each of the public meeting-houses in said town, fourteen days at least before the time for holding said meeting.

Given under our hands and seals, this day of
, in the year of our Lord one thousand eight hun-
dred and twenty

W. E. }
J. W. L. } *Selectmen*
O. C. } *of*
J. G. Jr. } *W.*
D. S. }

1. To determine the number of Representatives said town will choose for the present year.

If for the choice of a Representative to Congress.

V. *Return of votes for Governor, &c.*

At a legal meeting of the inhabitants of the town of _____ in the county of _____ and Commonwealth of Massachusetts, qualified by the constitution to vote for Governor and Lieutenant-Governor, holden on the _____ day of November, being the second Monday of said month, in the year of our Lord one thousand eight hundred and _____ for the purpose of giving in their votes for Governor and Lieutenant-Governor of said Common-

wealth—the whole number of votes given in, were sorted, counted, recorded, and declaration thereof made, as by the Constitution is directed; and were for the following persons:—

For Governor. {
For Lieutenant {
Governor. }

} *Selectmen of*
Town Clerk.

Attest,

VI. *Return of Votes for Senators.*

At a legal meeting of the inhabitants of the town of _____ in the county of _____ and Commonwealth of Massachusetts, qualified by the Constitution to vote for Senators and Counsellors, holden on the _____ day of November, being the second Monday of said month, in the year of our Lord one thousand eight hundred and _____ for the purpose of giving in their votes for Senators and Counsellors, for the district of _____. The whole number of votes given in, were sorted, counted, recorded, and declaration thereof made, as by the Constitution is directed; and were for the following persons:—

For

} *Selectmen of*

Attest,

Town Clerk.

VII. *Of the Form of Certificate for Representatives to the General Court.*—See page 164.

VIII. *Form for return of Votes for Representatives to Congress.*

At a legal meeting of the inhabitants of the town of _____ in the county of _____ and Commonwealth of Massachusetts, qualified as required by the Constitution to vote for Representatives in the General Court, holden on the _____ day of _____ in the year of our Lord one thousand eight hundred and _____ for the purpose of giving in their votes for a Representative of the said Commonwealth in

the Congress of the United States, for the district ;
votes for the following persons were given in, sorted,
counted, recorded, and declaration thereof made, as by
law directed, to wit :—

For

} *Selectmen of the*
} *town of*

Attest,

Town Clerk.

N. B.—The number of votes for each person must be
written in words at full length, and *not in figures*, in each
of the foregoing Returns.

**IX. Form of posting up the names of common Drunkards,
Tiplers, and Gamesters.**

The Selectmen of the town of B. having adjudged the
following persons to be common drunkards, [tiplers, or
common gamesters,] misspending their time and estate, at
taverns, inns, and shops of retailers of spirituous liquors
within said town,—hereby forbid the keepers of such
houses and shops within said town from entertaining or
suffering any of said persons to drink, tippie, or game in
any such house or shop, or any of the dependencies there-
of, or of selling them spirituous liquors, under the penal-
ty of the law, to wit :—X, Y, Z, &c.

Given under our hands at B. this day of A. D. 182 .

} *Selectmen*
} *of*

**X. Form of a Notice to Innholders and Retailers, forbid-
ding them to sell spirits to certain persons.**

To , a licensed in the town of .
Whereas

in the county of , by excessive drinking of spir-
ituous liquors, so misspend , waste , and lessen estate ,
as thereby to expose famil to want or indigent cir-
cumstances, as well as greatly injuring own health ,
and endangering the loss thereof, and also exposing the
said town of to charges for support and
maintenance :

We hereby forbid you, for the space of one year from this date, to sell said person any strong or spirituous liquors, or to purchase or procure, or cause to be purchased or procured, for and in behalf or for the use of said prohibited person, any spirituous liquors, under the penalties of the laws in this behalf made and provided.

Dated at this day of A. D. 182 .

} *Selectmen of*

XIII. Form of laying out a Town Road by the Selectmen.
—See page 191.

We the subscribers, Selectmen of the town of B. have laid out for the use of the said town, a town way as follows:—Beginning at a stake and stones on the northerly side of the road leading from J. P.'s to C. at land of D.; then through said D.'s land north twenty-five degrees east, one hundred rods, to land of E; then continuing the same course through land of said E. forty rods, until it intersects the road aforesaid, to be three rods wide, and to lie on the easterly side of said course. And we agreed with the owners of the land over which said way passes, for their damages, as follows:—to the said D. *forty dollars*, to be paid by the said town of B. before said road is opened: and the said E. released all the damages for laying said road through his land. And we allowed the several owners of the land aforesaid two months to take off the wood timber standing and growing thereon. Which said road is hereby reported to the town for their acceptance; and when accepted and recorded is forever after to be known as a public town way.

Dated at B. this day of A. D. 18 :

} *Selectmen
of B.*

An alteration of an old way, is to be made and reported in the same manner; but the legal effect thereof differs from laying out a new road, inasmuch as an alteration discontinues the old road, of course.

A town ought not to be called upon to act upon these questions, unless the whole subject matter is distinctly stated in the warrant for calling the town meeting. 5
Pick. 492.

XIV. Assignment of Limits to a Highway Surveyor.

To A. B. one of the Surveyors of Highways for the town
of B. for the year 18 .

The Selectmen of said town hereby assign to you the highways, town ways, and bridges within the following limits, to be repaired and amended according to law and the directions that shall be given you in the commitment of the highway tax, by the Assessors for the present year:—

Beginning at, &c. * * to, &c. * * .
B , April 10, 18 . } Selectmen
of

XV. Warrant of Selectmen or Town Clerk, to notify Town Officers to take the oath by law required.

To J. B. one of the Constables of the town of P.

{ L. S.)
{ L. S.) Greeting.
{ L. S.)

The following is a list of those persons who were this day chosen into office, at a meeting of the inhabitants of said town, and of whom an oath is by law required, viz.

* * * * *

You are hereby required, in the name of the Commonwealth of Massachusetts, within three days from the date hereof, to notify and summon each of the said persons to appear before the Clerk of said town, (or, if the Clerk sign the warrant, say before me) within seven days from the time you shall give such notice, to take the oath by law prescribed to the offices unto which they are respectively chosen.

Hereof fail not, and make return of this warrant with your doings thereon, within ten days from the date hereof.

Given under our hands and seals, (or, my hand and seal, if the Clerk sign it) this day of , A. D.

18 . S. F. }
W.S. } Selectmen.
J. T. }

CONSTABLE'S RETURN.

P. 18 .

Pursuant to the within warrant, I have notified and summoned the several persons within named, to appear before the Town Clerk, and take the oaths of their respective offices, as therein directed. J. B. Constable.

XVI. *Form of Annual Return to be made by the Selectmen.*

Report of the Selectmen, for the expenses of the town of S , for the year ending on the first Monday of March, 1829.

Paid for abatement of taxes,	\$31 00
Assessors' wages,	78 70
Repairs of public buildings,	47 00
Inoculating for kine pox,	25 00
Support of Schools,	800 00
Support of Poor,	390 00
Recording births and deaths,	4 50
Perambulating town lines,	9 00
Collectors' commissions,	37 00
Stationary,	4 50
Military equipments,	45 00
	<hr/>
	1171 70
Paid towards a farm for support of poor,	1000 00
	<hr/>
	\$2171 70

The Selectmen further report that they have settled with the treasurer, and his account stands as follows :—

Dr.

To balance on hand last year,	1,566 09
To amount of town grant,	3,200 00
To overlayings on all the taxes,	94 90
To highway deficiencies,	19 48
To amount received from military exempts,	12 00
	<hr/>
	\$4,892 47

Cr.

By amount of orders paid the	
Selectmen,	3,401 91
By do. paid the Overseers of	
the Poor,	600 68—4002 59

Balance in the treasury,	889 88
Town orders outstanding,	650 00

Net balance in favour of the town, \$239 88
 All which is submitted.

} *Selectmen of*

S. March 1829.

XVII. Notice of Selectmen to perambulate Division Lines between towns.

The Selectmen of the town of F. to the Selectmen of the town of P.

Gentlemen—The subscribers, Selectmen (or two of the Selectmen) of the town of F. being the most ancient of the said towns, hereby give notice, that we shall meet at _____, on the _____ day of _____, at _____ of the clock in the _____ noon, to perambulate and run the lines between the said towns, and renew the marks, according to a law of the Commonwealth in such cases made and provided; when and where, and for which service, you are hereby requested to attend.

Dated at said F. the _____	day of _____	A. D. 1829.
	J. N.	} <i>Selectmen of F.</i>
	J. J.	
	W. W.	

XVIII. Appointment of one to perambulate Lines between towns.

To A. B. of _____

We the subscribers, Selectmen of the town of F. by virtue of a law of the Commonwealth in such cases made and provided, do hereby nominate and appoint you to perambulate and run the dividing lines between said town and the town of F. and renew the marks; and you are to

make returns of your proceedings into the Clerk's office of said town, as soon as you have completed this service.

Given under our hands this day of A. D. 1829.

} *Selectmen of F.*

XIX. Form of a license for an Auctioneer.

The Selectmen of the town of S. at a meeting this day held for that purpose, hereby license E. K. as an Auctioneer in said town for the year ensuing—he having given the bonds required by the laws of the Commonwealth.

Dated at B. this day of , A. D. 1829.

} *Selectmen of*

XX. Form of an approval on the bond of an Auctioneer.

The Selectmen of the town of B. certify that they have examined the within bond—that the sureties therein named are well known to them as persons of sufficient ability to respond the penalty thereof; and they hereby approve the same.

B——.

} *Selectmen of*

SCHOOLS.

1. *Form of an application to the Selectmen for a School District meeting, by three or more freeholders.*—See page 158.

To the Selectmen of the town of W.

The subscribers, freeholders and resident in School District No. 8, within said town, hereby make application to you, to issue your warrant directed to one of the Subscribers, requiring him to warn the qualified voters of said School District to meet at such convenient time and place as you may appoint, to act on the articles following:—

1. To choose a moderator to preside in said meeting.
2. To choose a Clerk for said district.
3. To choose a prudential Committee-man for said district, pursuant to a vote of the town.

4. To see if the district will repair their school-house, and purchase necessary utensils for the same.

5. To vote such sums of money as may be thought sufficient for the foregoing purposes.

6. To prescribe the mode of warning future meetings* of said district.

W. B.

G. G.

S. B.

J. G.

W—, April 7, 1827.

II. *Warrant on the foregoing application.*

(L. s.) To S. B. one of the freeholders making the
(L. s.) above application.

(L. s.) In the name of the Commonwealth of Massachusetts you are required to notify and warn the inhabitants of School District No. 8, in the town of W. qualified to vote in town affairs, to meet at their school-house in said town on Monday the day of inst. at six o'clock P. M. then and there to act on the articles, mentioned in the annexed application.

And you are hereby directed to serve this warrant by notifying personally, every inhabitant of said District qualified to vote in town affairs, or by leaving at his place of abode, a written or printed notification, expressing the time, place and purposes of said meeting, seven days at least before the time appointed for the same. Hereof fail not, and make return of this warrant with your doings thereon, to the said meeting, at the above time and place. And the Clerk who shall then and there be chosen and sworn, is directed to make a further return of the same to us at our Office.

Given under our hands and seals this day of
A. D. P. M. } *Selectmen of*
J. F. } *W.*
F. W. P. }

* *Of warning future meetings.*] This power and that of calling meetings have sometimes been blended. The whole authority is derived from the Stat. 1826, ch. 143. and that act must be strictly followed. A District can never legally assemble, unless by warrant from the Selectmen, nor can that warrant be served by any person, other than by one of the freeholders making the application. The District may prescribe some more expeditious mode of warning, such as by posting the notice at some public place or by publishing the same in a newspaper, either of which modes would be legal, should the District so vote and direct.—See page 158.

III. *Return of the Freeholders.*

W—, 1827.

Pursuant to the foregoing warrant, I have notified and warned the inhabitants of said school district to meet at the said time and place, in the mode prescribed and for the purposes mentioned in said warrant.

S. B.

IV. *Oath of the Clerk.*

W—, ss. 1827.

Personally appeared J. B. and made oath, that he would faithfully discharge the duties of Clerk of School District No. 8, in the town of W. until another person shall be chosen and sworn in his stead.

Before J. G. Justice of the Peace.

V. *Application to the Selectmen, in case the District do not agree where to place their school house.*

To the Selectmen of the town of W.

The subscribers having been appointed by School District No. 8 in said town, to oversee the building of a new school house for said district, and as said district have not agreed where to set said house; application is hereby made to the Selectmen to determine the spot.

W—, 1829.

} Building Committee.

VI. *Application to the Selectmen, when a majority of the district refuse to appropriate money for any of the purposes required of a school district; to be made by at least five freeholders.—See page 160.*

To the Selectmen of the town of H.

The school house in school district No. 8, in said town, requiring certain repairs, and being destitute of necessary utensils, which said repairs and utensils would in our opinion amount to the sum of one hundred dollars; an estimate of which has been submitted to said district, at a legal meeting of the inhabitants thereof, with a request that they would vote a sum necessary for said purposes, when and where a motion to that effect, was negatived by a majority of said district: Wherefore the subscribers, being freeholders in said district, request that you would insert in the warrant for calling the next town meeting,

an article requiring the opinion of the town, upon the expediency of making the appropriation for said purposes, and if in the opinion of the town, the same is expedient, we request that a sufficient sum be raised for those purposes, upon the polls and estates in said district.

A. B. C. D. E.

H.—1829.

VII. *Forms of certificates for Instructors of Schools.*

We certify that L. W. is qualified to instruct the highest public school required by law in this town, and he is hereby engaged to keep such school for the benefit of all the inhabitants of said town.

W —, 1829.

C. A. }
A. B. } School Committee
C. D. } of the town of W.

We certify that H. G. is qualified according to law, to instruct the town school in District No. 2. for the ensuing season.

By order of the School Committee of W—.

W.—, Nov. 1829.

C. A. *Chairman.*

We certify that Miss A. B. is qualified according to law, to instruct the town school in district No. 5, the ensuing season,

By order of the School Committee of W—.

C. C. B. *Secretary.*

W—, April, 1829.

SEALER OF WEIGHTS AND MEASURES.

Notice to be posted in the month of May, annually.—
See page 213.

The Subscribers, Sealer of Weights and Measures for the town of O. for the present year—hereby gives notice to the inhabitants of said town, that he shall attend at his dwelling-house every Monday and Saturday in the present month, for the purpose of sealing all such large and

small Beams, Weights, and Measures, as shall be brought to him for that purpose.

Sealer.

O , May 1, 18 .

SURVEYORS OF HIGHWAYS.

Notification to a Person of his Highway Tax.—See page 217.

To A. B.

The amount of your taxes in the highway tax for the present year, committed to me by the Assessors of said town, is as follows :—

Poll,	0 55
Real,	9 70
Personal,	3 40
Income,	2 00——\$15 65

And you are hereby notified that I shall repair the road near the house of , on , at *six o'clock, A. M.* when and where you may have opportunity to work out your highway tax, either in person or by substitute, with one pair of oxen, a cart, a plough, and other suitable tools.

Surveyor.

B. , May 3, 18 .

TOWN CLERK.

I. *Warrant to notify Town Officers to take their Oaths.*—See Selectmen, page 327.

II. *Form of Return of Votes for Governor, &c.*—See Selectmen, page 323.

III. *Form of a return of Marriages, by a Minister or Justice.*—See page 236.

To A. B. Clerk of the town of O.

I certify, that for one year next preceding, I have joined in marriage the following persons:—

<i>Dates</i>	<i>Names.</i>

[Insert the Christian and surnames of both parties.]

C. D. } *Minister of the
Cong'l Society
in O.*

O. April 1, 18 .

IV. *Notice of the Clerk, of Money or Goods found, of the value of one dollar or upwards.*—See page 238.

On the day of , inst. I found [here insert a description of the articles, and the place where found,] the owner whereof is to me unknown.

A. B.

D. 182 .

V. *Notification to be posted.*

Found in the public highway in L. on the day of , inst. [here insert the articles, &c.] the owner whereof is to me unknown.

C. D.

D. 182 .

VI. *Warrant of a Town Clerk, for ascertaining the damages done by Creatures taken up and impounded, (to be issued at the request of the owners of such creatures.)*

To A. B. and C. D. of P. two disinterested and judicious persons,

GREETING.

*You are hereby appointed and empowered faithfully and impartially to estimate upon oath, the damage done to E. F. by [here describe the creatures] which for that cause have been taken up by G. H. and impounded in the town pound, (or at whatever place they may be impounded.)

Given under my hand, this day of A. D. 182 .
A. B. Town Clerk.

VII. Warrant of a Town Clerk, for estimating the damages done by creatures taken up and impounded, (to be issued on the application of the person who impounds them.)

To A. B. and C. D. of P. two disinterested and sufficient persons,

GREETING.

*You are hereby appointed and empowered faithfully and impartially to estimate upon oath, the damage done to E. F. by [*here describe the creatures*] which for the cause have been taken up and impounded by G. H. (*in such pound or in such place*) and also in like manner appraise so many of said creatures as shall be sufficient to answer the said damages and all charges.

Hereof fail not, and make return of this warrant to the Clerk's office of the said town of P. (*or, to me, if be issued by the Clerk*) as soon as the business shall be performed.

Given under my hand, this day of , A. D. 18
A. B. Town Clerk

VIII. Certificate of the votes for County Treasurer.

*At a legal meeting of the inhabitants of the town of P. qualified by the constitution to vote for Representatives, holden at said P. on the day of , A. D. 18

The said inhabitants gave in their votes for a county treasurer; and the same being counted and sorted in a meeting by the moderator thereof, and town clerk, it appeared that there were—for J. M. votes—for I. votes.

A true copy of record.

Attest,

J. F. Clerk

IX. Certificate of the Votes for Register of Deeds

*At a legal meeting of the inhabitants of the town of P. qualified by the constitution to vote for Representatives,

* County Treasurers are chosen annually, in March or April, and the votes must be returned at the next Court of Sessions.—*Stat. 1785.*

† Registers of Deeds are chosen once in five years, beginning with the year 1786, and the votes are to be returned at the next Court Sessions, on the first day of the Court's sitting.

holden at said P. on the day of , A. D. 182 .

The said inhabitants brought in their votes for Register of Deeds, and the same being counted and sorted by , who were chosen to count and sort the votes for that meeting, it appeared that the names of the persons voted for, and the number of votes, were as follows, viz. for I. I. votes—E. F. —S. W. .

A true copy of record. Attest, J. F. Town Clerk.

These Certificates are to be transmitted under seal to the next Court of Sessions, on the first day of the Court's sitting.

X. Publishment of Intentions of Marriage.

A. B. of P. and C. D. of F. intend marriage.

F——, A. D. 182 . J. F. Town Clerk.

XI. Certificate of entering and publishing Intentions of Marriage.

I hereby certify, that an intention of marriage between A. B. of P. and C. D. of F. hath been entered with me fourteen days prior to the date hereof, and afterwards published in the town of P. at three public religious meetings, on different days, at three days' distance, exclusively, from each other—or [by having the same posted up at the meeting-house in said town, fourteen days previous to the date hereof.]

Given under my hand this day of , A. D. 182 .
J. F. Town Clerk of P.

XII. Warrant of a Town Clerk, appointing persons to appraise Lost Goods, or Stray Beasts.

To A. B. and C. D. two disinterested and judicious persons, both of P. in the county of C.

(L. s.)

GREETING.

*You are hereby appointed and empowered to appraise upon oath, at the true value thereof in money, according to your best judgment * * * * found (and if it be a stray beast, add, and taken up) by E. F. of , who has entered, posted, and cried the same, as the law directs.

And you are to make return of this warrant, and your doings thereon, into the town clerk's office of said P. within seven days from the date hereof.

Given under my hand and seal the day of A. D. 18 .
J. F. Town Clerk of P.

I. Application to a Justice of the Peace, or Town Clerk, for a Precept to sell Swine.

1. If the owner is known.

To S. F. Esq. one of the Justices of the Peace for the county of C. Or,

To J. F. Clerk of the town of P.

*A. B. of said P. upon oath informs the said Justice, (or clerk) that on the day of he has taken up a swine, [*here insert the marks, natural and artificial, if any, and such a description of the size and age as can conveniently be done,*] owned by C. D. of P. going at large in said town of P. against the statute in that case provided, whereby the said C. D. hath forfeited the sum of for the recovery of which he impounded the said swine, and, within twenty-four hours then next following, gave him notice thereof in writing, (or left a notification thereof at his dwelling-house, *as the case may be*;) and although fourteen full days have elapsed since the impounding, yet he has not paid the said forfeiture and charges, nor has he replevied the said swine.

Wherefore your informant prays that you will issue a precept for selling the said swine, in manner and form as the law directs. A. B.

Dated the day of , A. D. 182 .

2. If the owner is unknown.

To S. F. Esq. one of the Justices of the Peace for the county of C. Or,

To J. F. Clerk of the town of P.

*A. B. of P. upon oath informs the said Justice, (or Clerk) that on the day of he found a swine, [*Here insert the marks, natural and artificial, if any, and such a description of the size and age as can conveniently be done,*] belonging to some person unknown at the time

of impounding, going at large in said town of P. against the statute in that case provided, whereby the owner hath forfeited the sum of _____, for the recovery of which he impounded the said swine, and, within twenty-four-hours then next following, caused notifications of the time, place and cause of impounding to be posted up, agreeably to the directions of the law in such cases; and although fourteen full days have elapsed since the impounding, no person hath appeared to pay the said forfeiture and charges, nor hath replevied the said swine: wherefore your informant prays that you would issue a precept for selling the said swine, in manner and form as the law directs.

Dated the _____ day of _____, A. D. 182 .

III. *Precept to sell swine impounded.*

S———ss. To either of the Constables of the
(Seal.) *town of _____*

Greeting.

WHEREAS A. B. of B——, in the county of S——, (addition) has this day given me information, that on the _____ day of _____ he found a swine [*here insert the marks, natural and artificial if any, and such a description of the size and age as can conveniently be done*] owned by C. D. of _____ (addition) going at large in said town of B——, against the statute in that case provided; whereby the said C. D. forfeited the sum of _____; for the recovery of which he impounded the same swine, and within twenty-four hours then next following, gave him notice thereof in writing [*or left a notification thereof at his dwelling-house, as the case may be*] and although fourteen full days have elapsed since the impounding, yet he has not paid the said forfeiture and charges, nor has he replevied the same swine [*or in case the owner is unknown, after the description of the swine, its marks natural and artificial, let it be inserted, belonging to some person unknown*] at the time of impounding, going at large against the statute in that case provided, whereby the owner forfeited the sum of _____, for the recovery of which he impounded the same swine, and within twenty-four hours then next following, caused notifica-

tions of the time, place, and cause of impounding, to be posted up agreeably to the directions of the law in such cases; and although fourteen full days have elapsed since the impounding, no person hath appeared to pay the said forfeiture and charges, or replevied the same swine,) as by the information by him signed and sworn unto, with me now remaining appears :

THESE are therefore, in the name of the Commonwealth of *Massachusetts*, to will and require you, after you have posted up notifications of the time and place of sale, twenty-four hours beforehand, to sell and dispose of the said swine, at such time and place as you shall have thus appointed, to the highest bidder; and from the monies arising upon the sale, you are to pay the said A. B.

, for the said forfeiture, and

by me allowed, for his cost, charges and expenses (according to the bill annexed) and

more for this precept, amounting in the whole to

And the surplus arising from such sale, deducting

for your own fees on the business, you are to pay over to the town treasurer of B——, to be disposed of as the law directs; and you are also directed to deliver the said treasurer a copy of the information of the said A. B. as it is recited herein, together with a certificate of the date of this process: And of this precept, with your doings hereon, you are to make return into the office of the town-clerk of B——, in fourteen days from this time. Given under my hand and seal, this

day of *Anno Domini*

NOTE ON COLLECTOR'S RETURN.

The Collector is required only to return a true and accurate list of the names of all persons who shall have paid him a State or County Tax subsequent to the time of making his next preceding return. He need not specify the time of payment.—See pages 84, 85.

[The following statutes were passed by the last Legislature but, were not received in season to be inserted under their appropriate heads.]

TREASURERS AND COLLECTORS.

The following is the act as approved March 28, 1834, in relation to the Collection of Taxes.

It provides that nothing contained in the Stat. 1831. Ch. 64. shall be construed to take away or impair the authority of any town or city Treasurer, who may be also chosen collector of taxes, to issue a warrant of distress against persons delinquent in the payment of taxes, according to the provisions of the statutes giving that authority to such Treasurer.—See page 78.

POOR.

An Act in addition to “ an Act providing for the relief and support, employment and removal of the poor, and for repealing all former laws made for those purposes.”

When the court shall judge two or more of kin to any poor person, to be of sufficient ability to contribute to the support of such poor persons, and shall assess upon such kindred any sum for such support, according to the provisions of the third section of the act to which this is in addition, it shall be the duty of the court to tax no more cost against any respondent, than shall have been occasioned by his default, or separate defence.—See page 136.

March 25, 1834.

WATCHES AND WARDS.

By Act of March 28, 1834, so much of the fourth section of the 82 ch. of the stat. of 1796, as provides that every watchman shall carry a staff, with a bill fastened thereon, is repealed.

And that all watchmen hereafter appointed by virtue of said statute, shall be equipped in such manner as the Mayor and Aldermen of the city of Boston and the Se-

lectmen of the several towns shall respectively appoint and determine.—See page 190.

MASSACHUSETTS SCHOOL FUND.

By statute of March 31, 1834, the money paid to the Commonwealth by the General Government for military services during the last war, and also the money resulting from the sale of public lands in the state of Maine, is to be established as a School Fund; and the interest thereof annually distributed to the city of Boston and the several towns of the Commonwealth in such manner as the Legislature shall hereafter direct. No Town, however, is to receive a larger sum than that voted to be raised for support of common Schools.

Respecting the Formation of School Districts.

Sect. 1. From and after the passing of this act, it shall be lawful, in cases where two or more contiguous school districts, in adjoining towns, are each, in their opinion, too small profitably to sustain schools in each, for such districts to unite and form one district, having all the powers and privileges, and subject to all the requirements and liabilities, which now are, or may hereafter be created by law, in regard to school districts: *Provided*, that in order to form such union of districts, at legal meetings called in each district for that purpose, a majority of the voters in the district, present and voting on the subject, shall determine to unite; and upon such vote's being certified by the clerk, to the town clerk of each town, at legal town meetings called for the purpose, a majority of the voters in each town, present and voting, shall determine to permit such union. *Provided, also*, that whenever the numbers shall have increased in such united district, so that a majority of the voters, present at any legal meeting called for the purpose, and voting on the subject, shall deem it expedient to separate, and again form two or more districts, it shall be lawful for them so to do, first obtaining the consent of the respective towns, in the same manner as is required for uniting them as aforesaid.

Sect. 2. The first meeting of such united district shall

be called in such manner as may be agreed upon by the respective districts, at the time of forming the union ; and at that meeting, the manner of calling future meetings shall be determined by a majority of voters, present and voting on the subject, and shall continue, until a different manner shall be prescribed by the district, at a legal meeting called for the purpose. And it shall be the duty of such district, at the first meeting, and annually there afterwards, to choose a prudential committee, who shall receive and expend the money raised and appropriated for said district, in each town, and generally possess all the powers, and discharge all the duties prescribed by law to be possessed and discharged by prudential committees.

Sect. 3. All monies which may be voted to be raised by such united district, pursuant to the provisions of the statutes of the Commonwealth, shall be assessed upon the polls and estates of the inhabitants of said district, and collected in the same manner that other taxes are assessed and collected. And it shall be the duty of the inhabitants of such district, at the time of voting to raise such monies, to determine what proportion shall be paid by the inhabitants of each town respectively, in proportion to their polls and estates ; and the duty of the clerk of said district to certify such vote to the assessors of each town respectively.

Sect. 4. The school committees of the towns from which such united district is formed, shall discharge the duties of school committees toward the same, in alternate years, commencing, from the time of union, with the most ancient town.

Sect. 5. The fifteenth section of the act of one thousand eight hundred and twenty-six chapter one hundred and forty-three, be so far amended as that the selectmen of any town shall have the power therein given, on the application, in the case provided for, of five or more of the legal voters of any school district in said town.

Sect. 6. The sixteenth section of the last named act be so far amended, as that the selectmen and inhabitants of any town shall have the power therein given, on the written application of any five inhabitants of a school district in said town, who pay taxes.

March 29, 1834.

For the orderly Solemnization of Marriages.

Sect. 1. Every Justice of the Peace within his jurisdiction, and every Minister of the Gospel within the Commonwealth, who has been ordained according to the usage of his denomination, and who is resident therein, be and they are hereby authorized and empowered to solemnize marriages between persons who may lawfully enter into that relation when either of the persons to be married belongs to, or is resident within, the jurisdiction of said Justice or Minister; but all such marriage shall be solemnized in the City, Town or District, in which the person solemnizing the same may reside, or within the City, Town or District in which one or both of the persons to be married may reside.

Sect. 2. All persons desiring to be joined in marriage, shall have their intentions of marriage published at three public religious meetings, on different days, at three days distance at least from each other exclusively, in the City, Town or District, wherein they respectively dwell, or shall have such their intentions of marriage posted up, by the Clerk of such City, Town or District wherein they respectively dwell, for the space of fourteen days in some public place, within the same City, Town or District, plainly written, and shall also produce to the Justice or Minister, who may be desired to marry them, a certificate of such publishment, under the hand of the Clerk of such City, Town or District respectively, and also that the intentions of marriage have been entered with him fourteen days prior to the date of such certificate; and when a male under twenty-one years, or a female under eighteen years of age, is to be married, the consent of the parent, guardian or other person under whose immediate care or government such party is, if within the Commonwealth, shall be first had to such marriage. And in case the parties or either of them, live in a Town, District, or other place where there shall be no Clerk, then publishment shall be made in manner aforesaid, in a City, Town or District next adjoining, and the certificate from the Clerk of such adjoining City, Town or District of such publishment, and of the entry of their intentions of marriage as aforesaid, shall be produced as aforesaid, previous to their marriage.

Sect. 3. If at any time, the banns of matrimony between any persons shall be forbidden, and the reasons thereof assigned in writing by the persons forbidding the same, be left with the City, Town or District Clerk, he shall forbear issuing a certificate as aforesaid, until the matter shall have been duly inquired into and determined before two Justices of the same county, quorum onus: *Provided*, The person forbidding the banns, shall, within seven days after filing the reasons as aforesaid, apply unto two Justices as aforesaid, and procure their determination thereon, unless the said Justices shall certify unto the said Clerk, that a further time is necessary for their determination on the reasons filed; in which case the Clerk shall forbear issuing a certificate, until the time then certified to be necessary shall expire, unless the Justices shall sooner determine, according to whose determination the Clerk shall govern himself herein; and if the said Justices shall determine that the reasons assigned by the person forbidding the said banns were not supported by the laws of the Commonwealth, then the person so forbidding shall pay all the cost that may have arisen in consequence of such objection, and the said Justices shall make up judgment, and issue execution accordingly.

Sect. 4. If any person shall deface or take down any publishment in writing, posted up as aforesaid before the expiration of the fourteen days, he shall upon conviction thereof, forfeit and pay a sum not less than two, or more than twenty dollars, to the use of the person who shall prosecute therefor. And if any Justice of the Peace, or Minister shall, otherwise than is expressly allowed and authorized by this Act, join any persons in marriage, they shall upon conviction thereof, severally forfeit and pay a sum not less than fifty, nor more than one hundred dollars, one moiety thereof to the use of the County whereof the offence may be committed, and the other moiety to the use of the person who shall prosecute therefor, and in case any person whatever not authorized and empowered to solemnize marriages by this Act, shall join any persons in marriage, and be convicted thereof in any Court of competent jurisdiction, upon presentment or indictment, he shall be imprisoned in the common jail or

confined to hard labour for a term not exceeding six months, or pay a fine not less than fifty, or more than two hundred dollars, to the use of the Commonwealth at the discretion of said Court.

Sect. 5. Every Justice and Minister shall make and keep a particular record of all the marriages solemnized before them respectively; and in the month of April annually shall make a return to the Clerk of the City, Town or District in which he resides, of a certificate containing the christian and surnames, and places of residence, of all the persons joined in marriage, by them respectively, within the year then last past, and also the time when, and the name of the City, Town or District, in which such marriages were respectively solemnized; and when neither of the persons married belongs to, or is resident in the City, Town or District, in which such Justice or Minister resides, then such Justice or Minister shall also make alike return of a certificate to the Clerk of the City, Town or District in which one or both of the persons may reside, within thirty days from the solemnization of the same. And any Justice or Minister who shall neglect to make such returns, shall, upon conviction thereof, before any Court of competent jurisdiction in the county in which he resides, forfeit and pay for each neglect a sum of not less than twenty nor more than one hundred dollars, at the discretion of said Court, one moiety thereof to the use of said County, and the other moiety to the use of the person who shall prosecute for the same; and every City, Town or District Clerk shall duly and seasonably record all marriages so certified to him as aforesaid.

Sect. 6. All marriages which have been or may be solemnized among the people called Quakers or Friends, in the manner and form used and practiced in their societies, shall be good and valid in law, any thing in this Act to the contrary notwithstanding. And the Clerk or keeper of the Records of the meeting wherein such marriages shall be solemnized, shall in the month of April annually, make and deliver to the Clerk of the City, Town or district, in which such society usually meet and worship, a certificate of all marriages solemnized therein during the year then last past, as in the fifth section of this

Act is provided, under the penalty of not less than twenty nor more than one hundred dollars for each neglect, to be recovered in the manner and to the uses as in said fifth section is provided.

Sect. 7. All marriages between persons who might lawfully enter into that relation, heretofore solemnized by any Justice or Minister, be and they hereby are confirmed and made valid in law, although such Justice or Minister may have exceeded his authority or jurisdiction.

Sect. 8. "An Act for the orderly solemnization of marriages," (except the seventh section thereof,) passed June twenty-second, in the year of our Lord one thousand seven hundred and eighty-six; also "An Act repealing a certain clause of An Act for the orderly solemnization of marriages," passed June fifteenth, in the year of our Lord one thousand seven hundred and ninety-five; also, "An Act explanatory of An Act for the orderly solemnization of marriages," passed January twenty-seventh, in the year of our Lord one thousand eight hundred and eighteen; also, An Act in explanation of An Act for the orderly solemnization of marriages, passed February twentieth, in the year of our Lord one thousand eight hundred and eighteen, and also, "An Act in further addition to the Act for the orderly solemnization of marriages," passed February twelfth, in the year of our Lord one thousand eight hundred and twenty-one, be and they are hereby repealed, *Provided however*, That all marriages confirmed by, or solemnized in pursuance of the provisions of these Acts, be ratified and confirmed.

Sect. 9. No Minister who has unintentionally violated the laws now in force for the solemnization of marriages, shall be subjected to any penalty or punishment for that cause.

Sect. 10. The provisions of this Act shall go into operation on the first day of May next.

April 1, 1834.

Note by the Editor.—It is much to be regretted that so much neglect on the part of ministers and magistrates to make returns of marriages to Town Clerks has heretofore prevailed. The omission has been, in many instances, attended with serious consequences. Connected with this subject is the duty of parents to transmit to the Town Clerk cor-

rect lists of all births and deaths in their families. Persons failing to conform to the provisions of this statute are liable to fine, and it is made the duty of the Town Clerk in all cases to exact the penalty. See page 238.

TYTHINGMEN.

I. How chosen and general powers.

For the better inspection of licensed houses, and the discovery of such persons as shall presume to sell without license:—

The Selectmen in each town shall take care that Tythingmen be annually chosen at the general meeting for the choice of town officers as is by law provided; and upon any vacancy, to fill up the number at any other town meeting.

II. Of their power and duty respecting Licensed Houses.

Tythingmen shall have power carefully to inspect all licensed houses, and to inform of all disorders or misdemeanors which they shall discover or know to be committed in them, or any of them, to a justice of the Peace, or the general sessions, within the same county; as also of all such as shall sell spirituous liquors as aforesaid, without license; and in like manner to inform of idle and disorderly persons, profane swearers, or cursers, sabbath-breakers, and the like offenders, to the intent they may be punished.

III. Of his duties under the act for the observance of the Lord's day.

Every Tythingman is hereby authorized to enter into any of the rooms and other parts of an inn or public house of entertainment on the Lord's day and the evening preceding and succeeding; and if such entrance shall be refused to any Tythingman, the landlord or licensed person shall forfeit the sum of forty shillings for each and every offence.

And the Tythingmen are further authorized, within their respective towns, to examine all persons whom they shall have good cause, from the circumstances thereof, to suspect of unnecessarily travelling on the Lord's day,

and to demand of all such persons the cause thereof, together with their names and places of abode; and if any person shall refuse to give answer, or shall give a false answer to such demand, he shall pay a fine not exceeding five pounds, nor less than twenty shillings: and if the reason given for such travelling shall not be satisfactory to such Tythingman, he shall enter a complaint against the person travelling, before a justice of the peace in the county where the offence is committed, if such person lives in such county, otherwise shall give information thereof to some Grand Jurymen, to be by him laid before the grand jury, for their consideration and presentment.

The oath of any Tythingman shall be deemed full and sufficient evidence, in any trial for any offence against this Act, unless, in the judgment of the Court or justice, the same shall be invalidated by other evidence that may be produced.

The special authority given by this Act of Tythingmen for preventing the breaches thereof, shall not be construed or understood to exempt any sheriff, grand juror, constable or other officers or persons whatsoever, from any obligation or duty to cause this Act to be put in execution, but they shall be held to take due notice and prosecute all breaches thereof, such special authority notwithstanding. Stat. 1791. Ch. 58. Sec. 10. 11. 12.

All prosecutions under the above act must be commenced within six months after the offence was committed.

The complainant is entitled to one half the fine and the county to the other. Stat. 1815. Ch. 135.

The following is the oath to be taken by the Tythingmen.

You, being chosen a tythingman for the town of ——— for the year ensuing, and until another shall be chosen in your room, do solemnly swear, that you will diligently attend to, and faithfully execute the duties of said office, without partiality and according to your best discretion and judgment. So help you God.

Concerning the Assessment of Taxes.

In the Assessment of all taxes voted to be raised pursuant to the Stat. of 1826. ch. 143. sect. 10, all real estate and machinery belonging to manufacturing corporations, shall be taxed in the districts where the same are situated, and in assessing the shares in any manufacturing corporation for similar purposes, there shall be deducted from the value thereof the value of the machinery and real estate belonging to such corporation.—See page 47.

March 31, 1834.

ERRATA.

The second and third sections referred at the bottom of page 95, are the last paragraph on page 94 and three first paragraphs on 95.

At page 243, for X. His duty to mortgages of personal property, read, His duty to record mortgages, &c.

At page 27, line 14th from the top, for *quere*, read *quere*.

The forms for Field Drivers at pages 308, and 309, have not been altered conformably to the recent law, and the note on page 309, relating to impounding, should have been left out. The forms may be easily altered so as to conform to the new statute.

[REDACTED]

